

Volume 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Richard Seeborg, Judge

ANIBAL RODRIGUEZ, et al.,)
individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

VS.)

NO. 3:20-CV-04688 RS

GOOGLE LLC,)

Defendant.)

San Francisco, California
Wednesday, August 20, 2025

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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8:07 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury.)

THE COURT: Good morning.

ALL: Good morning, Your Honor.

THE COURT: Please be seated.

I know last night there were some snafus in terms of filing things. Don't worry about it. These things happen. Don't make any -- don't let anybody get into trouble for that. I did get the apology. I appreciate it. So we can -- I got what I needed, so don't fret about that aspect of it.

So the issue with respect to Ms. Harvey, I did review the doctor's note, such as it is. I don't think that is sufficient. It doesn't explain the situation. It's a check-the-box thing.

I considered what the defendants have requested, and I think their alternative suggestion, which is that the use of the deposition can occur in their case and then, if the plaintiffs think that they need to counterdesignate under 106, they can do so, that they won't use the deposition or Ms. Harvey's testimony in their case-in-chief, it makes sense. And so that's what I'm inclined to order.

MR. LEE: I think that's right, Your Honor.

Thank you.

1 **MR. AGNOLUCCI:** Thank you, Your Honor. That's fine
2 with us.

3 I do want to make one comment, however. Yesterday during
4 opening statements, Mr. Boies commented that Ms. Harvey was
5 unavailable for medical reasons, which was totally
6 inappropriate in light of the fact that Your Honor had asked
7 for evidence of a medical problem, that the issue was yet to be
8 briefed by the parties, that we hadn't seen a note and that you
9 hadn't seen a note.

10 You know, obviously, the cat's out of the bag at this
11 point, but we would like an order that they cease from making
12 similar commentary going forward.

13 **THE COURT:** Okay. Well, no more comments about any
14 medical problems for Harvey.

15 **MR. AGNOLUCCI:** Thank you, Your Honor.

16 **THE COURT:** Okay. There was some issue with respect
17 to a deposition excerpt.

18 **MR. MCGEE:** Yes. Good morning, Your Honor.
19 Ryan McGee for the plaintiffs.

20 **THE COURT:** Good morning.

21 **MS. CHANDRASEKERA:** Good morning, Your Honor. Thilini
22 Chandrasekera for Google.

23 **THE COURT:** Good morning.

24 This is new to me, so you'll have to bring me -- tell me
25 what -- who's disputing what, and what's the issue?

1 **MR. McGEE:** Your Honor, I have copies of the two
2 exhibits that we'd be seeking to admit, as well as
3 Mr. Miraglia's full testimony.

4 We're not going to be, I don't believe this morning,
5 arguing over deposition experts -- excuse me -- deposition
6 excerpts or counters. I think it's just the admissibility of
7 these two documents.

8 **THE COURT:** Okay. And they're both emails from
9 Ms. Mueller; right?

10 **MR. McGEE:** That's correct. One is an email from
11 Ms. Mueller, and then the other is an email from Giles Hogben.

12 **THE COURT:** Okay.

13 **MR. McGEE:** And I can address PX4 briefly, Your Honor.
14 I know you made a lot of rulings yesterday on admission by
15 a party opponent. Mr. Miraglia, who is a recipient of this
16 email and is quoted in this email, head of the PDPO, he was, in
17 fact, the founder of Google's Privacy and Data Protection
18 Office, he's engaging here with Jens Mueller, who was -- excuse
19 me -- an engineer working on the Narnia II project.

20 There's also two Davids that may have been referred to
21 here. The first is Mr. Monsees, who is presently testifying;
22 the second is Mr. Warren, who, indeed, wrote Google's privacy
23 policy.

24 So we think that PX4 comes in as a party admission.

25 **THE COURT:** And then PX31, what is that?

1 **MR. MCGEE:** Forgive me, Your Honor.

2 That is an email between Mr. Kleidermacher, and he was the
3 head of Android Security and Privacy, and he was quoting
4 Mr. Miraglia's sentiments.

5 And Mr. Miraglia, during the testimony, confirmed that
6 those were indeed his sentiments.

7 **THE COURT:** Yes, go ahead.

8 **MS. CHANDRASEKERA:** Your Honor, first on PX4,
9 Mr. Miraglia is copied on these emails, but he's not quoted and
10 he's not engaging with this document.

11 The main issue is one of double hearsay that, even given
12 Your Honor's comments yesterday about party admissions -- it
13 takes place on page 2, beginning with "I'm confused by David's
14 comments." There's a citation to an unattached Google
15 document. The David is not identified. And then the main
16 point of the deposition designations is to discuss that quoted
17 area.

18 We don't know who David is. It's not necessarily even one
19 of the two Davids that counsel just requested. And I can
20 provide deposition testimony that shows that there's
21 uncertainty as to who it is and that there might be more
22 Davids.

23 In addition, just the fact that we don't know whether or
24 not whoever this David was and whatever he was saying was in
25 the scope of his employment means that there's no foundation

1 here to say that it is a party admission that can be used by
2 Google. Or used against Google, I should say.

3 And I can speak to PX31 as well or wait on this.

4 **THE COURT:** You say the same argument for 31?

5 **MS. CHANDRASEKERA:** It's slightly different.

6 The same issue applies, that Mr. Miraglia is not engaging
7 at all in PX31. There is a discussion of "I agree with Eric's
8 sentiment," which is what they're saying is the quote of him,
9 but his deposition testimony says he actually does not agree
10 with that characterization of what he said.

11 So this is just a really classic hearsay issue. We cannot
12 cross the person about what they were talking about.

13 **MR. MCGEE:** And, Your Honor, Mr. Miraglia, during his
14 deposition, confirmed that Mr. Kleidermacher was quoting him,
15 but it was at the time of the deposition that he took issue
16 with what was being quoted, and he had subsequently changed his
17 sentiment.

18 **THE COURT:** Okay. Well --

19 **MS. CHANDRASEKERA:** We would not agree with that
20 characterization, Your Honor.

21 **THE COURT:** Well, I'll take it back.

22 Have you highlighted the parts of this deposition --

23 **MR. MCGEE:** I can do that, Your Honor. I --

24 **THE COURT:** -- that are implicating these documents?

25 **MR. MCGEE:** And I apologize. I interrupted you.

1 **THE COURT:** Can you both look at that, and then I can
2 focus on that?

3 **MR. MCGEE:** Yes, Your Honor.

4 **MS. CHANDRASEKERA:** Yes, Your Honor.

5 **THE COURT:** On those -- generally, on those
6 objections -- and I've had a lot of them. We'll hear a lot
7 more probably about admission of a party opponent, and then
8 sometimes I hear a hearsay objection.

9 Sometimes I understand the hearsay objection is
10 appropriate, but remember, hearsay is if it's being introduced
11 for the truth of the matter asserted. So there are times when
12 these documents are being introduced and the party introducing
13 them is not saying that they're true. They're saying it's
14 quite the contrary, like with respect to privacy policies and
15 the like, that they didn't mean it. So that isn't even
16 hearsay.

17 So keep in mind, when the objection is -- that kind of
18 document, I don't think a hearsay objection is the -- you may
19 have an objection with respect to authentication or foundation
20 or something else. But I understand that some of the documents
21 that are being admitted as admissions of party opponents are
22 being admitted for the truth of the matter asserted, some of
23 the emails and the like. But remember that when you're making
24 these objections.

25 So the other issue -- and I'll take a look, once you give

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1 me this back, at this particular issue.

2 But let's talk for a moment, because it's going to come up
3 and it seems to be a big issue. This whole business about this
4 Australian stuff, who talks about that for each side?

5 Okay. Let me ask you, Mr. Santacana. Did any of the
6 putative class members ever see any of the Australian material,
7 the privacy stuff from Australia that you want to utilize?

8 **MR. SANTACANA:** Yes, Your Honor. The consent flows
9 were used in the United States. The proceeding was in
10 Australia, but the consent flows, as Mr. Monsees will testify,
11 are U.S. flows that were also shown in Australia.

12 **THE COURT:** Okay. Do you dispute that?

13 **MS. BONN:** Well, we do, Your Honor, because we don't
14 know. We received zero discovery on that.

15 There's an Australian court filing. And that's precisely
16 the reason we served an interrogatory saying, "Tell us the
17 public disclosures at issue in the United States."

18 And if Google was going to take the position, "It's not
19 just an Australian court filing. You're missing something
20 here. The same things buried in this Australian document were
21 also shown to users in the U.S.," they had an obligation to
22 disclose that to us so that we could pursue it in discovery.

23 **THE COURT:** Let me ask, Mr. Santacana, basically, why
24 are you using these Australian -- if, in fact, they're the same
25 things that the U.S. folks saw, why are we pulling this stuff

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1 from Australia?

2 **MR. SANTACANA:** Your Honor, it wasn't pulled from
3 Australia. It was pulled from Google's source code repository
4 to show U.S. and global flows.

5 **THE COURT:** Well, why can't you use -- why do we have
6 this passion play about Australia? I mean, I don't understand
7 it. If it's U.S. stuff, let's just use the U.S. stuff. Why
8 are we even off on this --

9 **MR. SANTACANA:** Yes, Your Honor. It was actually a
10 pretty major project to put together what a flow looked like in
11 2019, which is evident from G921. It took a lot of man-hours
12 to do because they have to take the source code and rerun it.

13 I want to point out a couple of things because I don't --
14 I think that the Australia part of this is a complete sideshow.

15 The plaintiffs cite the Australian proceedings in their
16 operative complaint. The plaintiffs' expert talks about the
17 Australia proceedings and how relevant those proceedings are to
18 this case. Both experts talk about the Australian document in
19 question.

20 When Ms. Bonn says that they don't have discovery, what
21 she means is that they chose not to take discovery. They
22 didn't ask anyone about it in deposition. But there is
23 testimony and there are expert reports that address these exact
24 setup flows.

25 Our expert on the setup flows and on how disclosures work

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1 relies on these flows in her report. They deposed her about
2 her opinions, and what she says is: These are flows that were
3 in the United States. This is what this class looked like.

4 **THE COURT:** So it's your -- your representation. I'm
5 asking --

6 **MR. SANTACANA:** Yes, Your Honor.

7 **THE COURT:** -- for you to represent to me --

8 **MR. SANTACANA:** That is my representation.

9 **THE COURT:** -- that -- well, let me first ask it
10 before you say "yes."

11 -- that it's almost an incidental fact that some of this
12 also was apparently implicated in some Australian proceeding,
13 and that you're going to represent that it's the -- that these
14 putative class members, this would have been the -- you use --
15 you say consent flows, or however you characterize it, it's
16 what they would have seen at the operable time during the class
17 period in the United States.

18 **MR. SANTACANA:** That will be the testimony,
19 Your Honor.

20 **THE COURT:** Okay.

21 **MS. BONN:** May I address an issue --

22 **THE COURT:** Yes.

23 **MS. BONN:** -- that was just raised?

24 In our complaint, we reference the fact that Google has
25 been sued by a number of authorities around the world for

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1 misleading disclosures, including the Australian regulator.

2 We sought discovery, and we were barred by the magistrate
3 judge from seeking further discovery from Google about the
4 Australian and other litigation.

5 So the idea that we just mentioned this, we knew it was at
6 issue and chose not to seek discovery, is false.

7 **THE COURT:** But what is the -- I mean, how are you
8 sandbagged?

9 **MS. BONN:** Here's how --

10 **THE COURT:** I don't understand.

11 **MS. BONN:** Here's how we were sandbagged. Two ways,
12 Your Honor.

13 Number one, they did not produce to us from their files
14 the documents in the U.S. So all we had was this Australian
15 document.

16 We served an interrogatory to say: Tell us what all the
17 public disclosures were about app activity, data collection in
18 the U.S. that could be at issue in this case.

19 And they disclosed a series of categories of disclosures:
20 privacy policies, policies about GA for Firebase, versions of
21 the button that you could find on that activity controls page.
22 And they never disclosed that: We will be relying on account
23 creation flows in the U.S.

24 And you should know it's not just that these flows were in
25 an Australian document. We are taking the position in this

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1 case, whether we've produced the documents or not, that those
2 same screens shown in the Australian filing were also in place
3 in the U.S. and we are relying on them.

4 And to your point, Your Honor, if these were truly the
5 flows that were at issue, why did they not just produce them in
6 this case? They produced privacy policies, emails, other
7 internal documents, not these.

8 That is why now they are going to this Australian court
9 filing because it's the only thing in their production that
10 actually has these flows in it. That's it. That's all they
11 got because they didn't produce it in the U.S., and they didn't
12 disclose to us that those consent flows would be at issue.

13 And, further, we were barred from taking discovery about
14 the Australian proceeding in its entirety.

15 **THE COURT:** If the magistrate judge barred you and I
16 didn't get any appeal on that, that's the end of that story.
17 You can't say, "Well, it's our" --

18 **MS. BONN:** Sure.

19 **THE COURT:** "Because we weren't allowed to do
20 discovery, therefore, you should now effectively undermine the
21 ruling of the magistrate judge."

22 **MS. BONN:** No, I'm not.

23 **THE COURT:** Because I won't do that.

24 **MS. BONN:** I'm not, Your Honor.

25 But I think it's a sword/shield issue. You can't say on

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1 the one hand, "You can't take discovery of Australia, but we're
2 also not going to tell you what was in place in the U.S. and,
3 later, we'll blame you and say, 'Well, you should have known
4 from this Australia thing to pull the thread on that ball of
5 yarn.'"

6 That's the issue.

7 **THE COURT:** Okay.

8 **MR. SANTACANA:** Your Honor, I would like to clear
9 something up.

10 **THE COURT:** Mr. Santacana?

11 **MR. SANTACANA:** I want to be as clear as I can. This
12 witness will testify that through the work of many people over
13 many hours, they pulled from Google's source code repository in
14 the United States, people in the United States pulled consent
15 flows that applied both in the U.S. and also happened to apply
16 in other places.

17 They created a document. That document is a source of
18 truth on what it looked like in 2019, through great effort.
19 And then it was used in the future after they created it in
20 Australia in a judicial proceeding.

21 I don't know why the plaintiffs don't like the Australian
22 judicial system, but that's not the issue. The issue is it was
23 created based on consent flows in the U.S.

24 **THE COURT:** Well, the issue is what they had -- is the
25 sandbag issue.

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1 **MR. SANTACANA:** On the sandbagging issue, their
2 expert, Professor Schneier -- and I'd be happy to hand you --
3 I'll need a moment, but we'll print and highlight his expert
4 report -- that he discusses and analyzes and impugns these
5 consent flows as class period consent flows in at least nine
6 paragraphs of his report. He goes through them one by one.

7 Then the plaintiffs deposed our rebuttal expert to
8 Professor Schneier; and when they deposed her, they asked her
9 [as read]:

10 **"QUESTION:** So let's look at this. Do you see these three
11 images of disclosures at the top?"

12 This is page 66 of Dr. Hoffman's deposition.

13 She said [as read]:

14 **"ANSWER:** I do."

15 And she was asked [as read]:

16 **"QUESTION:** Is it your understanding that these three
17 images capture the same disclosure but different versions?

18 **"ANSWER:** It is my understanding that all three are WAA
19 disclosures."

20 This is not sandbagging. They were perfectly aware this
21 document existed. They used it as an exhibit in the deposition
22 of our expert, and they cited it in their own expert's report.

23 **THE COURT:** Okay. And this is going to arise with
24 this witness?

25 **MR. SANTACANA:** During Mr. Monsees' direct testimony.

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1 **THE COURT:** All right. Okay.

2 **MS. BONN:** And, Your Honor, if it's helpful, now that
3 we've got a cite from them about where they think this was
4 addressed in expert reports, we'd like to take a look. We
5 could also take it up at the morning break.

6 We also have, of course, our hearsay objections, which,
7 you know, we would just make contemporaneously during the
8 testimony, as Your Honor suggested yesterday.

9 **THE COURT:** Okay. I'll take the Miraglia materials
10 back and take a look at those, and hopefully, we can get
11 started pretty quickly.

12 And that issue is also implicated today; right? Miraglia?

13 **MR. SANTACANA:** Miraglia's deposition?

14 **THE COURT:** Miraglia.

15 **MS. BONN:** Miraglia? Yes, Your Honor. Just the two
16 exhibits, correct. But we think most likely, after
17 Mr. Monsees, we'd put our plaintiffs on; and if -- we need it
18 at the end of the day, so there's more time for that, I think.

19 **MR. SANTACANA:** I have a housekeeping issue,
20 Your Honor.

21 **THE COURT:** Yes.

22 **MR. SANTACANA:** So on Monday morning, you and I
23 discussed our objection to an opening slide that showed a
24 damages number we claim was a newly disclosed opinion.

25 On Monday evening, Your Honor issued a minute order

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1 ordering the plaintiffs to file an opposition to our Motion in
2 Limine Number 15, which moves to strike that opinion before
3 Mr. Lasinski testifies.

4 That opposition brief wasn't filed. The plaintiffs let us
5 know that, in their view, you ruled on that motion in the
6 morning, despite ordering an opposition brief in the afternoon.
7 So we are not clear on whether Your Honor considers that motion
8 resolved or not.

9 **MS. BONN:** And I apologize there's a misunderstanding.
10 On the record the Court's ruling was, "Sounds like that's an
11 issue for cross-examination." We took that as he can talk
12 about it on direct; but if we were wrong, we can file our
13 written opposition today.

14 **THE COURT:** Okay. I'll go back and try to figure it
15 out.

16 **MS. BONN:** Thank you, Your Honor.

17 **MR. SANTACANA:** Thank you, Your Honor.

18 **THE COURT:** All right.

19 **THE COURTROOM DEPUTY:** Court stands in brief recess.

20 (Recess taken at 8:24 a.m.)

21 (Proceedings resumed at 8:36 a.m.)

22 (Proceedings were heard out of the presence of the jury.)

23 **THE COURTROOM DEPUTY:** All rise. The United States
24 District Court for the Northern District of California is now
25 in session. The Honorable Richard Seeborg is presiding.

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1 **THE COURT:** Okay. We have all the jurors here, so can
2 we bring them out?

3 **MR. HUR:** Yes.

4 **THE COURT:** We did make arrangements, which hopefully
5 will help us, that our juror, who's coming from two hours away,
6 we can get him a hotel room. So he's going to be available, I
7 hope.

8 Okay. Actually, while they're lining them up, I do -- to
9 make it clear, I do want a responsive brief on Google's
10 Number 15. If you could get me that by the end of the day.

11 **MS. BONN:** Yes, Your Honor.

12 **THE COURT:** Thank you.

13 (Proceedings were heard in the presence of the jury.)

14 **THE COURT:** Good morning, members of the jury.
15 Thank you very much for being prompt and ready to go. We all
16 appreciate it.

17 We ended yesterday with Mr. Monsees on the stand, so if he
18 could return to the stand.

19 If you can come back to the stand.

20 And I'll just -- you don't need to swear him in again.

21 **THE COURTROOM DEPUTY:** Thank you.

22 **DAVID MICHAEL MONSEES,**
23 called as a witness for the Plaintiffs, having been previously
24 duly sworn, testified further as follows:

25 **THE WITNESS:** Good morning.

1 **THE COURT:** Good morning.

2 I just want to confirm with you, you understand,
3 Mr. Monsees, you remain under oath.

4 **THE WITNESS:** Yes, I -- yes, I do.

5 **THE COURT:** Thank you.

6 Mr. Carmody.

7 **MR. CARMODY:** Thank you, Your Honor.

8 And before we begin, it's uncontested or counsel has
9 agreed, but we offer PX45, which was the testimony of
10 Mr. Pichai yesterday.

11 **THE COURT:** Very well. 45 --

12 **MR. CARMODY:** Thank you.

13 **THE COURT:** -- if it hasn't been admitted yet, is now
14 admitted.

15 **MR. CARMODY:** Thank you.

16 (Trial Exhibit PX45 received in evidence.)

17 **DIRECT EXAMINATION (RESUMED)**

18 **BY MR. CARMODY:**

19 **Q.** Good morning, sir.

20 We only have a few minutes here. I want to go back,
21 though, to how we ended yesterday.

22 We were talking about Plaintiffs' Exhibit 2, kind of --
23 what's entitled the "User" -- or the "Retention Controls
24 Comprehension Study." Remember that?

25 **A.** Yes, I do.

1 Q. And there was -- I pointed to page 20, and it was one of
2 the findings. And if we can turn to that, it's right in the
3 top in big letters.

4 And one of the findings of all the participants was they
5 expected turning off the WAA toggle to stop their activity from
6 being saved. Do you remember we spoke about that?

7 A. Yes, I do.

8 Q. And you, in turn, talked to me and reminded us that -- you
9 said the study also tested the comprehension of Google's auto
10 delete feature; fair?

11 A. Yes.

12 Q. And to clarify, the auto delete feature is one that
13 applies when WAA is on; correct? The WAA button is on?

14 A. That's correct. It --

15 Q. Okay.

16 A. It doesn't only apply when the WAA button is on. It
17 applies to any data that was saved to the user's account
18 because of Web & App Activity. So it's like what goes into
19 their WAA bucket, so to speak.

20 Q. Now, I want to show you -- we're going to plow through
21 this -- a page that we didn't talk about yesterday and, in
22 fact, it's page 9.

23 And what this page 9 is -- and I could have and should
24 have showed you it yesterday and I don't know why I didn't, but
25 it talks about a finding summary because, the truth is, there

1 was more than one finding in this 50-page study; fair?

2 A. Fair.

3 Q. Okay. So if we take a look at the very first one, that,
4 I believe, is identical to what we just showed you. 1(a), it
5 says when the WAA toggle is off [as read]:

6 "All participants expected turning WAA toggle
7 off to stop saving their activity."

8 Fair?

9 A. Fair.

10 Q. And then below that, we see I think what you were speaking
11 about, which is talking about what half the participants
12 thought about the auto delete feature; correct?

13 A. That's correct.

14 Q. Okay. And so now I want to move on to something
15 different.

16 Remember I handed you yesterday Exhibits 403, 404, and
17 405, the ones that came from your custodial file?

18 A. That's right.

19 Q. Did you supervise the creation of those reports?

20 A. Yes, I did.

21 Q. Okay. Now, in the last 60 seconds or so, setting aside
22 documents, we looked yesterday at privacy policies; we looked
23 at Google's help page. Forget about that. Let's just talk a
24 moment, you and me.

25 Do you think Google needs to get a user's consent before

1 Google collects their data?

2 **A.** Yes, I do. I think when we're collecting their data tied
3 to their identity -- right? -- it's that breadcrumb or history
4 of the things that you do, we want to make sure that users are
5 aware when we know that information associated with them.

6 **Q.** We agree that a user's consent has to be meaningful; fair?

7 **A.** Yes, I agree.

8 **Q.** And you agree that for a user's consent to be meaningful,
9 Google should clearly disclose what data they're collecting;
10 fair?

11 **A.** Yes.

12 **Q.** And why Google's collecting that data; fair?

13 **A.** I agree.

14 **Q.** You haven't and can't point us to a single document where
15 Google ever told any class member, "When you turn your WAA
16 toggle off, we're going to collect your data and make money
17 from it"; correct?

18 **A.** I mean, I think we looked at the privacy policy, which
19 I think explains a lot about the data we collect and how we use
20 it, including for advertising that powers many of our services.

21 **Q.** Sir, my question is different. My question is: Can
22 you -- and you can bring it up with your counsel. We're going
23 to be here for another week or so.

24 Can you show us a single document that we can all look at
25 where Google says clearly to its users, "You turn that WAA

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1 toggle off, we're going to collect and make money off your
2 data"? Can you bring us that document?

3 **A.** I mean, I -- personally, I think that's what the privacy
4 policy explains, as we looked at it yesterday.

5 **Q.** Well, I hope -- will you go through it with your counsel,
6 as I sit down now, and show us where in the privacy policy it
7 says, "Users, when you turn that WAA toggle off, we're still
8 going to collect your data and we're going to make money from
9 it"?

10 **A.** Yes. I believe we are going to go through the privacy
11 policy today.

12 **MR. CARMODY:** Good. Thank you, sir.

13 **THE WITNESS:** Thank you.

14 **THE COURT:** Mr. Santacana?

15 **MR. SANTACANA:** Thanks.

16 Your Honor, is it all right if we just place this board
17 over here so, you know, everybody can see it?

18 **THE COURT:** Yes.

19 **MR. SANTACANA:** Thank you.

20 Can you all hear me?

21 **CROSS-EXAMINATION**

22 **BY MR. SANTACANA:**

23 **Q.** Good morning, Mr. Monsees.

24 **A.** Good morning.

25 **Q.** You and I have met before?

1 A. Yes, we have.

2 Q. I'm Eduardo Santacana. I represent Google in this case.

3 Can you please tell the jury a little bit about yourself.

4 A. Sure. I'm David Monsees. I live here in San Francisco.

5 I've been here since 2008, I think; and I've been employed at
6 Google since 2009, almost 16 years now.

7 Q. Would you mind explaining in a little bit more detail your
8 role at Google?

9 A. Sure. I'm a product manager in what is technically a part
10 of Google Search, and I oversee a system internally we call
11 Footprints. And Footprints is a storage system that we use to
12 help feature teams, like the Google Suggest Team or the,
13 you know, Play Recommendation Team, store and use user data,
14 data tied to a user's Google Account.

15 Q. Would you mind just moving that microphone a little bit
16 closer to you?

17 A. Sure.

18 Q. I'm having a little trouble hearing.

19 A. Is this better?

20 Q. That's much better. Thank you.

21 A. Okay. Sorry.

22 Q. So what does Google use this Footprints database for?

23 A. Yeah. So Footprints powers a lot of different features.
24 We store user data, like the Web & App Activity data that we've
25 been talking about yesterday, we store that data in Footprints.

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1 We provide a lot of different tools on top of it that lets a
2 user see and delete it. So we have the My Activity UI.

3 And Footprints also manages a bunch of the different
4 settings, like Web & App Activity, that determine when it's on
5 or off, how that data can be stored, and how that data can be
6 used.

7 Q. Web & App Activity, I think you said yesterday, is your
8 responsibility?

9 A. That's correct.

10 Q. And are you responsible for the way that it is described
11 to users?

12 A. Yes. The activity controls page we see here, I'm
13 responsible for this. It's a part of our My Activity set of
14 user privacy tools.

15 Q. And is it fair to say the buck stops with you with respect
16 to how this is described to users, or is that overstating it?

17 A. That's correct.

18 Q. How long has this Web & App Activity button been around?

19 A. The Web & App Activity setting has been around since 2005,
20 a little over 20 years.

21 Q. In the 20 years that this button has been around, have
22 you, from time to time, heard that some users are confused
23 about some aspects of Web & App Activity?

24 A. Yes. I mean, we've had, I think, over 38 billion Google
25 accounts created by this point, over 3 billion users across the

1 world, all kinds of different backgrounds. And some users have
2 different expectations, different perceptions, and we regularly
3 try to improve and make these settings clear for all users.

4 **Q.** How do you -- in your role as the person in charge of
5 describing this activity control, how do you think about the
6 challenge of being clear to 3 billion people?

7 **A.** I think the real challenge that we face is that we're all
8 busy; right? We hear from users in research. They don't want
9 to spend a lot of time reading screens. And different users
10 have different expectations, depending on the products that
11 they use.

12 And so I think a lot of what we rely on is things like
13 user research, statistics and stuff from the website analytics,
14 from tools like this, so we can see how users behave.

15 We try to identify problems and resolve them, keeping
16 things kind of with an objective as being as simple as possible
17 for all those different users and then providing more detail
18 for the users looking for more.

19 **Q.** You mentioned that you have, from time to time, heard that
20 some users are confused about parts of Web & App Activity.
21 What have you done to address confusion when you learn about
22 it?

23 **A.** So we've made a bunch of changes to the text in the way we
24 describe. We've done a lot of work on our Help Center
25 articles, the "Learn More" articles.

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1 I remember we restructured, actually, the way this page
2 looks a little bit, adding things like icons that help users
3 better understand what products are part of Web & App Activity.

4 We launched an FAQ that we added so that users could even
5 submit questions, if they had, up at the top of the Web & App
6 Activity page.

7 So we've done a lot of these little changes to try to help
8 users.

9 **Q.** Is it your opinion that the changes you've made have
10 resulted in a perfect disclosure that's perfectly clear to
11 every user?

12 **A.** I think with 3 billion users, unfortunately, there's
13 probably no such thing as perfect, but we do our best.

14 **Q.** Now, how long have you been in charge of WAA?

15 **A.** I've been in charge of WAA since -- I think 2013 is when I
16 started leading the Footprints Team.

17 **Q.** That's 12 years?

18 **A.** Correct.

19 **Q.** In the 12 years that you have been in charge of Web & App
20 Activity, has anyone ever raised a concern with you that
21 Web & App Activity should control Google's collection of
22 de-identified data?

23 **A.** No. Until this case, I had never heard that concern
24 raised in the past.

25 **Q.** Has anyone raised a concern with you in those 12 years

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1 that the Web & App Activity control should apply to
2 de-identified data that comes from Google Analytics?

3 **A.** No.

4 **Q.** When people have raised concerns with you at Google,
5 inside of Google, about how the Web & App Activity button
6 should work and whether it's confusing to users, what sorts of
7 concerns do they bring to you?

8 **A.** Almost always the question about Web & App Activity is
9 about if data should or shouldn't be saved to the user's
10 Google Account. The concern is -- like we saw from some of the
11 discussions with Chris yesterday, concerns are often about when
12 the setting is off, should data be saved against an account for
13 different purposes.

14 **Q.** Now, we saw an email yesterday from Mr. Chris Ruemmler.
15 You know him?

16 **A.** Yes, I do.

17 **Q.** Have you -- is that the only email you've exchanged with
18 him?

19 **A.** I've exchanged many emails about many different topics
20 with Chris. Our two roles at the time would bump into each
21 other a lot. We work in similar areas.

22 **Q.** And you've discussed Web & App Activity with him on more
23 than one occasion. Is that what you're saying?

24 **A.** Yes, I have.

25 **Q.** Over the time that you've worked with Mr. Ruemmler, what

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1 understanding have you come to about -- thank you.

2 Let me put it this way: What concerns did he raise to you
3 about Web & App Activity, in your own words?

4 **A.** I think Chris really had two concerns. Chris oversaw
5 privacy for Google Workspace products. It's like your Gmail
6 data. And Chris was very concerned about where Gmail data
7 would go and how Gmail data would be used.

8 For example, Chris was very concerned that when a user was
9 using certain products, Gmail data might be saved in the
10 Web & App Activity data and then could be used by ads, which
11 would go against some of the Gmail Team's policies.

12 Chris was also concerned about what it would mean when
13 Web & App Activity was off and if data would still be saved to
14 a user's Google Account.

15 I think what's important to remember is that Gmail only
16 ever works with a Google Account. There's no de-identified
17 version of Gmail. You can't use email signed out.

18 So I think in Chris's world, he's very familiar with
19 everything being assumed against an account, and that's not
20 true for a lot of our products at Google, like Search or Maps.

21 **Q.** Yesterday you were asked a number of questions about,
22 quote, "user data," that term "user data." Is Gmail data user
23 data?

24 **A.** Yes, it is.

25 **Q.** Is de-identified data user data --

1 A. It's --

2 Q. -- within -- as people talk about it within Google?

3 A. I think if it comes from users, we tend to think of it as
4 user data, though it's not personal information.

5 Q. Okay. So there's a user data and then there's
6 de-identified user data? Is that how you talk about it at
7 Google?

8 A. That's correct.

9 Q. You were also shown a user study yesterday, and we'll take
10 a look at it in a moment, Mr. Monsees. But have you ever seen
11 a user study that showed that users expected that this control,
12 Web & App Activity, could control the flow of de-identified
13 data?

14 A. No, I have not.

15 Q. The user study we saw yesterday doesn't qualify, in your
16 mind?

17 A. No. All of these studies are focused on data saved to a
18 user's account, and that's where we see the confusion sometimes
19 come up.

20 Q. What about Google Analytics data? Have you seen a user
21 study -- well, let me back up for a second.

22 You request user studies or they're just provided to you?

23 A. Yeah. I -- a product manager will request user studies,
24 particularly if we're launching a new feature, like the auto
25 delete feature we've been discussing here. I'll request maybe

1 multiple studies to try to make sure it makes sense to as many
2 of our users as possible.

3 **Q.** Are you in charge of how the user study is performed?

4 **A.** No, I'm not. Google has these Google experience
5 researchers. They're the ones that are kind of the experts in
6 how to pick the right study. They run the studies, and then
7 they provide reports back to us.

8 **Q.** And what do you do with the reports when you get them?

9 **A.** We'll often meet with the researcher and discuss how the
10 study went. They'll give us their overview, and then we take
11 that feedback.

12 **Q.** So is it fair to say that interpreting these user studies
13 is one of your job responsibilities?

14 **A.** Yes, that's fair.

15 **Q.** Okay. So in the 12 years you've been in charge of WAA,
16 have you ever requested and then received a user study that
17 indicated to you that users were under the impression that
18 Web & App Activity controls the flow of Google Analytics data
19 when it's de-identified?

20 **A.** No, I have not.

21 **Q.** Now, you were asked by the plaintiffs' lawyer yesterday
22 whether Google shows its users their user data. Does Google
23 show users their user data?

24 **A.** Yes, it does.

25 **Q.** How does it do that?

1 **A.** Tools like the My Activity UI or if you click those manage
2 buttons, the view-all button that we can see up there -- the
3 view-all button, apologies -- that takes users to our UIs that
4 we show users all the things saved against their account. They
5 can see. They can delete. They can even download or send the
6 data to another company.

7 **Q.** Now, I believe that when you were asked about showing
8 users their user data, you also said something about there's
9 data that Google doesn't show to users and allow them to
10 delete. Can you expand on that?

11 **A.** Sure. I believe yesterday we were talking about
12 de-identified data. A great example of this would be, when you
13 visit the Google home page, your request from your Web browser
14 goes to a Google data center somewhere. That data center
15 creates a server log that says where this request comes from,
16 what system did it go to. It's used to make sure that our
17 systems run fast so the Google Web page shows up quickly.

18 But that log itself is never associated with the user's
19 Google Account. It's vital to the running of our systems, but
20 it's de-identified and it's not personal user data.

21 **Q.** So the server log that records that somebody has loaded
22 Google.com, maybe it records that somebody ran a search, you
23 don't -- you don't think this control should provide users the
24 ability to view and delete that log?

25 **A.** No, because if users could delete it, people, you know,

1 performing abuse, systems that try to take down Google servers,
2 like, we wouldn't be able to stop that. It would be very weird
3 to have these holes cut out of this essential data.

4 Q. What if -- what if Google were not permitted even to
5 collect the -- you know, the transmission of information
6 requesting Google.com appear on a web browser?

7 A. I think that would dramatically degrade the quality of
8 Google's services and how they work. That information,
9 I think, is essential to make sure, you know, when you go to
10 Google.com, it loads fast, it loads at all.

11 Q. It might not load at all?

12 A. If you go to an overloaded data center, you'd get a 503.
13 It's an error code.

14 Q. Now, as the head of Web & App Activity, what is your
15 personal position on the intent of what this control is
16 supposed to cover?

17 A. The Web & App Activity setting has always been about the
18 data that we save in your Google Account, about the things you
19 do, so that we can use that data to provide you more
20 personalized experiences, basically to make Google services
21 work better for you.

22 Q. Where -- and you should feel free to step down if you'd
23 like and point it out or you can point to it, but where in this
24 activity control people see on their phone or their browser,
25 where are you telling people that that's what this control is

1 intended to cover?

2 **A.** Well, I think we can just see -- I don't know if everyone
3 can see it, but just on the top -- they're actually underlined,
4 I think -- the very description of what the activity controls
5 are for, so not just Web & App Activity, is to save this type
6 of data in your account to give you those more personalized
7 experiences.

8 Just to explain that just for a second, we can't
9 personalize your experience if we don't know who you are. So
10 this only works when you're signed in and this data is saved.

11 And I think it's that account piece that ends up being so
12 critical because this is like your personal profile, your
13 history that goes with you so that the things you've done in
14 the past can improve the things you do in the future.

15 **Q.** And so just for absolute clarity, when a user turns WAA or
16 sWAA off, does data collected from users go into their profile
17 at Google?

18 **A.** When you turn those settings off, that data does not go
19 into your profile at Google. It would not be saved against
20 your account.

21 **Q.** Yesterday you were asked a number of questions about an
22 email that you received and responded to from Mr. Ruemmler.
23 I'd like to take a look at that because it sounded like there
24 was something you wanted to explain about it.

25 Can we look at Exhibit Number 3? And let's just take a

1 look at the top here.

2 Now, before we get deeper into this email, Mr. Monsees,
3 can you just tell the jury a little bit more about
4 Mr. Ruemmmler's role with respect to the work that you have done
5 with him?

6 **A.** Yeah. I believe I stated before that Mr. Ruemmmler is an
7 engineer on the Privacy Team for Google Workspaces. And Google
8 Workspaces, if you haven't heard the term, basically means your
9 Gmail, your Google Drive, your Google Docs, that kind of family
10 of services.

11 And as part of Chris's role over there -- or my
12 interactions, I should say, with Chris have often been about
13 reviewing and ensuring the policies that Google has internally
14 are being enforced with the safe handling and collection of
15 Google Workspace data.

16 **Q.** Do you respect Mr. Ruemmmler's opinion?

17 **A.** Yes, I do.

18 **Q.** And have you taken his opinion seriously when deciding
19 what to do with this control?

20 **A.** Yes.

21 **Q.** I noticed yesterday that you mentioned several times that
22 the discussion that you and Mr. Ruemmmler were having in this
23 exhibit had to do with the concept of data saved to a
24 Google Account.

25 Are you -- as you worked at Google, in charge of WAA, are

1 you in the habit of clarifying, every time you say "data," that
2 you mean data saved to a Google Account?

3 **A.** No. Almost everyone that comes and talks to me, like when
4 Chris and I work, I know that they're talking about Google
5 Account data because that is primarily the role that I do.

6 **Q.** Your role is about Google Account data?

7 **A.** Exactly.

8 **Q.** When you see -- when you have writings that you receive
9 and people talk about data, in your experience, do the people
10 who are writing to you always attach the words "in your
11 account" behind the word "data" whenever they say "data"?

12 **A.** No. I think that would be kind of silly to repeat that
13 all the time.

14 **Q.** What sort of data does Mr. Rueemmler work with at Google?

15 **A.** I mentioned that he works with Gmail data -- predominantly
16 that's what Chris and I would talk about -- and how that Gmail
17 data is used to enable various cool features. Like, you could
18 ask Google Assistant, "Is my flight on time?" And it would
19 know, "Oh, you have a flight confirmation from Southwest," and
20 it could answer that using your Gmail data.

21 **Q.** You mentioned yesterday that this email thread had
22 something to do with, I think you said, a WAA-off logging
23 proposal. Do you remember that?

24 **A.** Yes, I do.

25 **Q.** Can you just explain briefly for the jury what the WAA-off

1 logging proposal is? I don't think you got a chance to explain
2 it.

3 **A.** Sure. So I believe it was around 2019, maybe even late
4 2018, we had had discussions to change the way WAA works when
5 it's turned off.

6 In the past, when you turned Web & App Activity off, it
7 basically stopped all personalization from happening, not just
8 on historic -- history, like your Web & App Activity data, but
9 even if you told Google your home address so you could say,
10 like, "Directions home" when you're in the car, that, because
11 it's personal, we would require Web & App Activity because we
12 want to ensure that the logs that are created -- you can't
13 really de-identify a log if it has your home address in it;
14 right? -- so we would just say, "We'll disable those."

15 And we had spent a lot of time trying to find a different
16 solution so we could enable those types of personal features,
17 particularly on things like the Assistant, which is meant to be
18 very personal, without also requiring you to save your
19 Web & App Activity.

20 **Q.** So just so I understand your example, can you just spell
21 it out for us, who are not embedded in it? What is it that was
22 not working for users when WAA was off that you were trying to
23 address? Just give us one example.

24 **A.** Sorry. I think, basically, simply it's that when WAA was
25 off, non-history-based personal features just couldn't work for

1 users, and that would greatly limit some of the products that
2 we use.

3 Q. So if somebody said "Find me cafes in your home" on
4 Google Search and WAA was off, would that have worked?

5 A. That would work. But I'll give you an example of
6 something that used to annoy my wife a lot --

7 Q. Okay.

8 A. -- is I have, you know, Google Assistants in my home and I
9 have my lights controlled -- some of the lights controlled by
10 voice.

11 When WAA was off, you couldn't say, "Hey, Google, turn off
12 the lights," because that needed personal account information
13 to work and that was blocked when WAA was off. That was very
14 frustrating.

15 Q. Is that kind of -- it sounds like a pretty significant bug
16 from the experience of the user. Why would Google have
17 disabled your ability to turn off the lights when WAA was off?

18 A. Well, like in my example of using home address, we did it
19 to try to check -- protect user privacy. We wanted to make
20 sure that personal data wouldn't be logged in the de-identified
21 logs when WAA is off. So what we did is we engineered a
22 solution that could update that policy so that we could enable
23 these features. You could turn off your lights. You could get
24 directions home without requiring Web & App Activity to be on.

25 Q. Okay. And so this sort of first-draft proposal is the one

1 Mr. Rueemmler is expressing concerns about?

2 A. Yes. I believe we worked on this project for more than
3 two years, at least another year after this discussion with
4 Chris.

5 Q. It took two years to fix this light problem?

6 A. Yes.

7 Q. Why did it take so long?

8 A. There are a lot of systems at Google that are very
9 complicated, and we need to be very careful when we're making
10 changes to user privacy controls. We don't want a system to
11 break and accidentally collect or mishandle user data.

12 Q. Wouldn't an easy proposal -- wouldn't an easy solution
13 have been to just let the Google Assistant know where you live?
14 It's in your house.

15 A. It would be, but the concern that we had is that if that
16 data, like your home address, went into our de-identified logs,
17 it might make those identifiable, which would go against our
18 policies.

19 Q. So what is it about this technical proposal that
20 Mr. Rueemmler was telling you he didn't like?

21 A. Yeah. So in this first proposal, the first proposal was
22 very simple. It was: Well, what if instead of writing against
23 a de-identified log when a user has WAA off, we'll just still
24 write it to the user's Google Account, we'll just automatically
25 delete it.

1 The catch, though, as Mr. Ruemmler is very aware with
2 being so technically involved, is that it takes Google Systems
3 a little bit of time to delete.

4 And so the concerns that he's raising in a couple places
5 here is that it would mean that we would still have the data,
6 your Web & App Activity, against your Google Account even when
7 the setting is off just for a little bit of time. But his
8 point was, I think, valid. We would still have it, and he was
9 concerned about how we would explain that to users.

10 Q. So just to be absolutely clear, this proposal would have
11 allowed Google to know where your Google Assistant is even when
12 WAA is off temporarily?

13 A. That's correct.

14 Q. And he didn't like that because?

15 A. Because I think, as he explains in quite some detail in
16 this exhibit we were looking at, he was worried that it
17 would -- we would be misrepresenting to users. Basically, we
18 wouldn't be explaining clearly what WAA actually does when it's
19 off.

20 And you see him, I recall, reference a couple of times the
21 GAIA temp. That's what he's talking about, is writing to a
22 Google Account temporarily.

23 Q. So let's look at the last paragraph of this first page.
24 I think you were shown some of the statements in this paragraph
25 yesterday, but not all of them.

1 Could you just take a look, Mr. Monsees, to the second
2 sentence and read it to the jury?

3 **A.** Sure. Chris is saying here [as read]:

4 "If I choose not to store data in my account,
5 then Google should not have access to the data either
6 as the data should not be in the account."

7 **Q.** So he's saying to you in this email that Google should be
8 concerned about data that should not be in the account?

9 **A.** What he's saying --

10 **MR. CARMODY:** A little bit of hearsay is okay, but
11 he's getting into all these conversations he had.

12 **MR. SANTACANA:** Your Honor, he was questioned for a
13 long time yesterday about what Mr. Rueemler thinks.

14 **THE COURT:** This document is in evidence. You can
15 certainly ask about it. Stay away from what did Mr. Rueemler
16 mean or what is in his mind because, obviously, he can't
17 testify to that.

18 **MR. SANTACANA:** I will.

19 **THE COURT:** But you can proceed.

20 **MR. SANTACANA:** Thank you, Your Honor.

21 **BY MR. SANTACANA:**

22 **Q.** So, Mr. Monsees, just to rephrase my question, what did
23 you understand this sentence to mean when he says to you that
24 he's concerned about whether data should not be in the account?

25 **A.** Given that the proposal that Chris was talking about would

1 have temporarily saved data in a user's account, I read this to
2 mean that that data shouldn't be saved in the user's account,
3 meaning he disagreed with the proposal.

4 **Q.** Let's take a look at the end of this paragraph, which is
5 at the top of the next page.

6 Now, could you just read that last -- the only full
7 sentence there for me?

8 **A.** Yeah. He says [as read]:

9 "I'm probably better off having WAA on and
10 deleting the data immediately versus having WAA set
11 to off if Google moves it to GAIA temp logging."

12 **Q.** Is GAIA temp logging a reference to the same proposal you
13 were discussing?

14 **A.** That's exactly the proposal, yeah.

15 **Q.** Can you explain briefly your understanding of why a user
16 would be better off having WAA on and deleting immediately
17 versus having WAA off if you had adopted this first-draft
18 proposal?

19 **A.** Yeah. I think what Chris is saying is that if WAA had
20 been on and you deleted immediately, at least you would see it
21 and it would run through a different system to remove it from
22 our system -- you know, from Google Systems. So, basically,
23 we'd remove it from your account faster, is what he's saying,
24 than the temporary plan.

25 **Q.** Let's look at your response to Mr. Rueemmler, which is on

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1 page 3, just about a third of the way down, the paragraph that
2 starts "By some interpretations."

3 And if you could just read the only full sentence -- or
4 the second sentence here.

5 **A.** Sure. It says [as read]:

6 "With the move to temp personal logs" --

7 And just to clarify, that's the GAIA temp thing we've been
8 talking about.

9 **Q.** So that's the third label for the same thing?

10 **A.** Yeah. Clearly, a confusing project. Sorry.

11 [As read]:

12 -- "WAA off will retain less data than signed
13 out; however, signed out is and was never associated
14 with an identity, so the risk balance is different."

15 **Q.** So just to be clear, Mr. Monsees, this email is from 2019.
16 That's before this lawsuit was filed?

17 **A.** That's correct.

18 **Q.** And in 2019, before this lawsuit was filed, you were
19 drawing a distinction between data associated with an identity
20 and data that's not associated with an identity?

21 **A.** Yes. I always have.

22 **Q.** Okay. Now, let's look at the last paragraph here in this
23 page, where it says -- starts with the word "Today."

24 So this is another paragraph you wrote?

25 **A.** Yes.

1 Q. Let's look -- so just read the first sentence for us.

2 A. Sure.

3 [As read]:

4 "Today (in Search, Maps, Assistant, et cetera)
5 WAA off is logged the same as being signed out."

6 Q. Can you just explain to the jury what you mean by that?

7 A. Yeah. The -- what this would mean is when you use
8 products like Google Search, when you had WAA off, we would log
9 those logs generated -- right? -- what responses the products
10 gave, but always to a de-identified ID that happened to be the
11 exact same ID as when you're using Google signed out of your
12 Google Account.

13 Q. Now, can you read the next sentence? It's a little long,
14 but we'll break it down.

15 A. Sure.

16 [As read]:

17 "What the WAA-off temp personal logs project
18 will do" --

19 Q. Sorry. I think that's the fourth label for the same
20 project?

21 A. Yes. Sorry. A lot of the same words, though.

22 What this project will do is [as read]:

23 -- "change that behavior to be aligned with what
24 YouTube, Play, Apps, and many other teams have done
25 for years with GAIA temp logs. Instead of creating a

1 pseudonymous archival log, we will create a temporary
2 (30- to 60-day, Sawmill deletion window) limited
3 purpose log."

4 **Q.** Okay. Can you just explain what you meant when you said
5 "instead of creating a pseudonymous archival log"?

6 **A.** Internally, Google will often use the term "pseudonymous"
7 or "pseudonym" to mean the same thing basically as
8 de-identified. A pseudonym is just like a replacement name;
9 right? So instead of saving to a Google Account, which is this
10 GAIA ID we've seen come up a couple of times, we would save to
11 another random string of numbers and letters that could never
12 be associated back to you.

13 **Q.** And why did you say "instead of creating a pseudonymous
14 archival log"?

15 **A.** Because that is what Search, Maps, and Assistant had been
16 doing to this point, the same pseudonymous or de-identified log
17 that we use signed out. This proposal was to change it, write
18 it to the Google Account, but only temporarily.

19 **Q.** In the end, in response to Mr. Ruemmler, did you make a
20 decision about whether to adopt this proposal?

21 **A.** Yes, we did. Thanks to discussions with Chris and others,
22 we actually dramatically changed the proposal; and what we
23 eventually launched in late 2020, maybe early 2021, was a new
24 different type of pseudonymous ID to maintain the same
25 de-identified behavior.

1 Q. Let's look at the top of page 1, that email or that
2 paragraph that starts "Thanks, David" -- or, excuse me. What I
3 mean, actually, is your email where you say, "Hi, Chris. You
4 can read more..." And then the paragraph [as read]:

5 "I would be happy to discuss further. Feel free
6 to grab 30 minutes with Leslie Liu and myself."

7 Who is Leslie Liu?

8 A. Leslie Liu was my lawyer at the time on this team.

9 Q. Why did you invite her to this conversation?

10 A. Because Leslie knows a lot about this space and Google's
11 internal policies, and so if we were going to have a discussion
12 about policies with Chris, I thought it would be helpful to
13 have her there.

14 Q. At the end of this process and these discussions, your
15 decision was not to adopt this proposal. Is that what you
16 said?

17 A. That's correct.

18 Q. Now, I think you said the ultimate thing you did do was
19 another type of pseudonymous log.

20 A. That's right.

21 Q. Which is another way of saying another type of
22 de-identified log?

23 A. That's correct.

24 Q. As far as you know, Mr. Monsees, was Mr. Ruemmler
25 satisfied with your solution of using a de-identified log to

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1 fix the lights in your house?

2 **A.** Yes, I believe so.

3 **Q.** He's never complained to you that --

4 **MR. CARMODY:** Your Honor, this is more of the hearsay.

5 **THE COURT:** Well, why don't you ask -- you're going to
6 call that witness, so you can ask that witness.

7 **BY MR. SANTACANA:**

8 **Q.** Has Mr. Rueemmler ever complained to you --

9 **MR. CARMODY:** Objection.

10 **THE COURT:** He can answer that question.

11 Yes, you can go ahead with that question.

12 **MR. SANTACANA:** Thank you, Your Honor.

13 **BY MR. SANTACANA:**

14 **Q.** Has Mr. Rueemmler ever complained to you that the use of
15 de-identified data in response to this project is inconsistent
16 with the activity controls description?

17 **A.** No, he has not.

18 **Q.** Now, let's take a look at the user study you talked about
19 yesterday. That's Exhibit Number 2.

20 It sounded to me like you wanted to explain a little bit
21 more about what this study is about. Could you just take a
22 moment briefly to do that for the jury now?

23 **A.** Sure. Actually, can we move to the next slide? Is that
24 possible?

25 **Q.** Of course.

1 **A.** If we could zoom in on that second paragraph there, this
2 is just the overview of what this study was that I had
3 requested.

4 This study was really about trying to understand how users
5 thought of this new auto delete setting and how that behaved,
6 whether the auto delete setting was on or off, when the
7 Web & App Activity setting was on and off. We did so many
8 studies on this project. This was a completely new concept, so
9 we had to really take our time to make sure it made sense.

10 And we had seen issues in the past where, when Web & App
11 Activity was off, users didn't expect auto delete to work; and
12 that's what, like, really the next 50 pages in this long
13 document is studying.

14 **Q.** Let's go to page 6.

15 The question -- the first question, which you were shown
16 yesterday, says [as read]:

17 "WAA: What do users expect turning WAA off to
18 mean?"

19 Now, you ordered up this study?

20 **A.** That's correct.

21 **Q.** So you wanted that question answered?

22 **A.** That question, I think, is essential to do this research
23 because before we can understand how users think that auto
24 delete setting works, we have to first understand how they
25 think WAA off works regarding the data in their account.

1 Q. All right. Let's go to page 20, which you looked at
2 yesterday.

3 And, actually, while we're doing that, can you just
4 explain to the jury, you know, there's lot of different types
5 of market research. How is this research conducted?

6 A. This research, I think in the beginning we saw -- so
7 I think this was a small study. So that typically means, like,
8 maybe eight or nine people will come into a room with a
9 researcher and they'll say, "Hey, take a look at this
10 prototype." I can't remember if this was on paper or on a
11 screen. And they'll just ask questions and get responses.

12 There are different types of studies the Research Team
13 runs too.

14 Q. Are those -- and how many participants was this one?

15 A. I think this was nine.

16 Q. In the United States?

17 A. In, yes, I believe the United States.

18 Q. So are those participants told anything orally or given
19 anything written down about what they're supposed to be doing?

20 A. Just the questions asked by the researcher to guide them
21 through the prototype that we do. The goal is really not to
22 bias the participant. We want to see if they're confused about
23 something. And we ask a lot of questions about what they
24 expect. Like, when you click this button, what do you think
25 you'll see? And they ask questions like that.

1 Q. Are the questions and the script, is any of that in this
2 presentation?

3 A. No. I believe this presentation is just the summary
4 coming out of all of that research.

5 Q. So you were shown this page yesterday. Do you recall,
6 just from your personal memory, receiving this result when it
7 came out?

8 A. I do.

9 Q. What was your reaction to seeing this slide when it first
10 came out?

11 A. This seems great to me. As a person in charge of
12 Web & App Activity, I read this to mean that users are
13 understanding the setting correctly, that these participants
14 understood that when they turned the Web & App Activity setting
15 off, that data would stop being saved into that Web & App
16 Activity bucket in their Google Account. And this is, then, a
17 good foundation where the researcher would move on to then ask
18 about how the auto delete setting would behave.

19 Q. Yesterday the plaintiffs' lawyer suggested to you that
20 this slide shows that users are confused. Are you disagreeing
21 with that?

22 A. I disagree with that, yeah.

23 Q. So can you explain to us why it doesn't say on this slide,
24 after the word "saved," "to your" -- why doesn't it say "to
25 your Google Account"?

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1 **A.** Because the researcher who prepared this who works on
2 Web & App Activity and the person she was preparing it for, for
3 me, who works on Web & App Activity, everything that we would
4 be discussing in this context is all about data saved in the
5 user's Google Account, and the focus here is how they can then
6 automatically delete that data. This is not about
7 de-identified data at all.

8 **Q.** This prototype you were testing, is that a picture of it
9 on the right?

10 **A.** Yes, it is.

11 **Q.** And in that prototype, did it say "in your Google Account"
12 anywhere?

13 **A.** Yes, it does. It's right up at the top [as read]:

14 "Choose which settings will save data in your
15 Google Account."

16 **Q.** Okay. Now, as far as you know -- why don't you take a
17 look at the full slide again.

18 As far as you know, were these participants asked about
19 de-identified data during the course of this study?

20 **A.** No, they were not.

21 **Q.** Are you in the habit, sir, of ordering studies to find out
22 what participants think about de-identified data?

23 **A.** No, I am not.

24 **Q.** Why not?

25 **A.** Because it just doesn't impact what I work on. Web & App

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1 Activity is a setting about data in your Google Account, so
2 that's what we focus most of our research on.

3 **Q.** Mr. Monsees, we have talked about, in this trial, the
4 concept of the Google Account a lot. Could you just take a
5 moment and explain to us in your own words what a
6 Google Account is?

7 **A.** Sure. A Google Account is really an identity that users
8 can create for free, and they typically associate it with,
9 like, an email address, so dave@gmail.com. And they provide
10 some additional profile information like their name. And the
11 key is that everything they then do when they sign in with that
12 Google Account is then associated with that identity.

13 **Q.** Does GAIA ID stand for something?

14 **A.** Yes. GAIA ID is a very old term. It stands for,
15 I believe, Google Accounts and Identity Authorization ID. So
16 close.

17 **Q.** Internally, you don't use the full term?

18 **A.** I honestly didn't look it up until we were preparing for
19 this. It's only ever been called GAIA ID.

20 **Q.** Okay. Is there a minimum amount of information that
21 you're required to provide -- or, I should say, a user is
22 required to provide to create a Google Account?

23 **A.** Yes. As I mentioned, users typically have to provide or
24 generate an email address that they'll want associated with
25 their Google Account. We need their first and last name,

1 though they could really type anything in there. We have to
2 have date of birth so we can determine if an account is for a
3 child and different restricted policies might apply to a minor
4 then.

5 And I think that's about it. There's maybe a few other
6 fields that are required.

7 **Q.** Are people required to provide the true first and last
8 name?

9 **A.** No. You could make anything up in your Google Account.

10 **Q.** What is the -- can you explain the relationship between
11 the email that somebody chooses when they create a
12 Google Account and the GAIA ID you've talked about?

13 **A.** Sure. The -- one of the attributes, I guess, for lack of
14 a better word, of a GAIA ID is the email address that they
15 create, but the two aren't the same. A GAIA ID is just a
16 different random string of letters and numbers that is a unique
17 ID within Google Systems.

18 **Q.** So if I manage to get my hands on your GAIA ID, could I
19 figure out your email address?

20 **A.** You couldn't, but if you were a product or a team who
21 needs that and is authorized to get access, there are tools
22 Google has that can go from a GAIA ID to the profile, which
23 would then include the email address.

24 **Q.** So anybody at Google who has a GAIA ID can look up who it
25 is?

1 **A.** No, not anybody. You have to have approved access to be
2 able to do that lookup.

3 **Q.** Okay. Where would I need to go if I wanted to set up a
4 new Google Account?

5 **A.** Lots of places. When you set up a new Android device,
6 like a Samsung phone or a Pixel phone, I believe there's a step
7 there where you can create a Google Account as part of the
8 process.

9 If you just go to any web browser, say, you know, visit
10 Google Search, in the top right you'll see a sign-in button.
11 When you go to sign in, there's an option that says "Create a
12 Google Account."

13 And most Google Apps I think also have a very similar
14 behavior. If you open the Gmail app on your iPhone, there'll
15 be an option right there to sign in and, if you don't have an
16 account, to create a Google Account.

17 **Q.** Sir, have you prepared anything to help the jury
18 understand what it's like to create a Google Account?

19 **A.** Yes. I signed out of my Google Account on my personal
20 Android phone and created a video just in July, stepping
21 through what it would look like to add a new account on my
22 phone.

23 **Q.** What steps did you follow when you were creating that
24 video?

25 **A.** I signed out of my normal personal Google Account, and

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1 then I went into the Google app on my phone and I went through
2 that flow I described where I could see I was signed out on the
3 top right, I tapped there, and I created an account from there.

4 **Q.** You did that in July of this year?

5 **A.** That's correct.

6 **Q.** How does the process that you recorded on this video
7 differ from the process of creating a Google Account during the
8 time period July 2016 to September 2024?

9 **A.** Some of the text and options may have changed in that
10 time, but it's pretty much the same thing.

11 **Q.** Okay. So the text that we might see on the screen isn't
12 necessarily exactly the same?

13 **A.** That's correct.

14 **Q.** But the steps are roughly similar?

15 **A.** The general requirements for creating an account, that all
16 is basically the same.

17 **Q.** Okay. Let's pull up this video that you prepared, and I
18 just want to play the first minute or so of it, the first piece
19 of it.

20 **A.** Sure.

21 **Q.** And if you wouldn't mind explaining to the jury, as we go,
22 what it is you were doing and clicking on.

23 **A.** Sure.

24 **THE COURTROOM DEPUTY:** Can I go ahead and show it to
25 the jury?

1 **THE COURT:** You may.

2 **MR. SANTACANA:** Yes, please display it to jury.

3 (Video was played but not reported.)

4 **THE WITNESS:** Oh, we may have skipped a little part,
5 if I recall, but --

6 **BY MR. SANTACANA:**

7 **Q.** That's all right. We can restart it.

8 **A.** Oh, yeah. Can -- are we able to?

9 **Q.** Sure.

10 **MR. SANTACANA:** Brooklyn, would you mind restarting
11 the video? Thank you.

12 (Video was played but not reported.)

13 **THE WITNESS:** Ah. So here I am in the Google app. Up
14 on the top right, I'm going to tap my account picker, and I
15 tapped an add account --

16 (Reporter interrupts to clarify the record.)

17 **THE WITNESS:** Account picker. And then I tapped the
18 little plus where it says "Add account."

19 So now it's -- there we go. It says I'm going to create a
20 personal account. I'm going to go ahead and put a first and
21 last name, obviously not actually my first and last name.

22 I mentioned I have to choose a date of birth, so I'm going
23 to go ahead and do that.

24 And gender is optional, so I'm just not going to fill it
25 out.

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1 Instead of choosing one of the ones that Google's creating
2 for me, I'm going to go ahead and type in the email address I
3 want to do here. It could really be anything.

4 Google's going to check. And now that worked, so I just
5 have to enter in a password.

6 I'm going to review this option to add a phone number, and
7 I'm just going to go ahead and skip it for time.

8 And then now I get to the privacy and terms screen.

9 **MR. SANTACANA:** Okay. We can take that down.

10 Thank you, Brooklyn.

11 **BY MR. SANTACANA:**

12 **Q.** So, Mr. Monsees, on that privacy and terms screen that we
13 last landed on, what is the user being asked to do at that
14 point?

15 **A.** Google summarizes some of our different terms of service
16 and privacy policies on this page, and these users must review
17 that information before they agree to creating their
18 Google Account, which would be the step at the bottom of that
19 screen.

20 **Q.** Are users required to actually read the privacy policy
21 today when they're creating a Google Account?

22 **A.** No, they're not. We provide links to it, but they don't
23 have to review it.

24 **Q.** Were they required to read the privacy policy at any point
25 since 2016 in order to create the Google Account?

1 A. No.

2 Q. Were they required to agree to the privacy policy in order
3 to create the Google Account at -- all throughout the time
4 period 2016 to now?

5 A. Yes, they were.

6 Q. What about the Google terms of use that were -- that was
7 referred to there? Were users required to agree to the terms
8 of use since 2016?

9 A. Yes, they were.

10 Q. But they didn't have to read those either if they didn't
11 want to?

12 A. Correct.

13 Q. All right. Let's take a look at the next piece of this
14 video.

15 (Video was played but not reported.)

16 BY MR. SANTACANA:

17 Q. And just explain again what you're doing.

18 A. So I've just scrolled down a little bit. So this is just
19 past the top of the page where the links that we saw to the
20 privacy policy and the terms of use are.

21 Kind of going through this section here, there's a section
22 that mentions that I'm in control, that Web & App Activity is
23 turned on when you create your account; but you can always
24 select "More options," which we can see in the bottom left.

25 So I believe I'm going to go ahead now and click on "More

1 options."

2 This kind of explains that this is data saved in my
3 Google Account. Here's Web & App Activity, kind of the
4 description of how that setting works and what the data is used
5 for, as well as how long the data is saved in my account.

6 And now what I'm going to do is I think I'm going to go
7 ahead and check on the -- see where it says "Learn more about
8 Web & App Activity" underneath that radio button? I'm going to
9 click on that.

10 Ah, and this opens kind of a bigger window. You can see
11 it's more words, and it's just more information about Web & App
12 Activity and the various kind of details about it.

13 **Q.** Okay. Let's take that down for a moment.

14 So I think a couple of questions about what just happened
15 there.

16 You clicked on "More options," and then it showed you some
17 Web & App Activity options. Have there always been -- let me
18 phrase it this way: Since 2016, have users always had the
19 opportunity to choose whether to have WAA on or off when they
20 were creating a Google Account?

21 **A.** I believe for most of the period, but not all of it.

22 **Q.** Okay. So can you break that down?

23 **A.** Yeah. I think in 2018 we launched the option, that "More
24 options" feature we looked at. Users were always informed that
25 Web & App Activity, that kind of data, was being saved to their

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1 account; but in 2018, we added the option where they could
2 change it if they wanted, as well as some other settings.

3 Now, after creating an account, users have always, through
4 the period, been able to go and modify these settings at any
5 time.

6 Q. From 2016 to 2018, was Web & App Activity default on or
7 default off?

8 A. It was default on.

9 Q. It was?

10 A. Default on.

11 Q. From 2016 to 2018?

12 A. That's correct.

13 Q. Now, what about the setting this case is about,
14 supplemental Web & App Activity? Was sWAA default on or
15 default off from 2016 to 2018?

16 A. It was default on since the end of 2016, I believe.

17 Q. Okay. And then what changed in 2018?

18 A. In 2018, we updated our descriptions, tried to make them,
19 you know, clearer for users, and we added that "More options"
20 flow that we just clicked on that included the Web & App
21 Activity section that had the on-and-off toggles.

22 So the user was informed, kind of in that short summary at
23 the top, that the data was on; but if they wanted, they could
24 change it and you could turn the setting off before you
25 actually created the account.

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1 Q. So I want to ask you about this language at the top of the
2 activity controls page. We'll come back to it in a minute.

3 But since 2016, has the activity controls page always
4 mentioned that it relates to data saved in your account?

5 A. Yes.

6 Q. Since 2016, if a user turned WAA off, would they have been
7 doing it on a page that had this phrase "saved in your
8 account"?

9 A. Yes.

10 Q. There's no page where somebody might have turned WAA off
11 and this language was not there for them?

12 A. No. WAA has always been in the context of your
13 Google Account on a page similar to this.

14 Q. All right. Now, after the "More options" piece, you said
15 you clicked on something called "Learn more"?

16 A. That's right.

17 Q. What is a "Learn more" link?

18 A. We internally call this progressive disclosure, and the
19 idea of progressive disclosure is to try to, almost like
20 peeling back the layers of an onion, give users a short summary
21 of things that are clear about these general categories of
22 settings that we have. And then for the users who want to know
23 more, they can click "Learn more," peel back another layer, and
24 you saw we had a lot more information on that screen.

25 Q. On that screen, I noticed that there were some other

1 settings as well, not just Web & App Activity. What are the
2 other -- are there other activity controls from the 2016 to
3 2024 time period?

4 **A.** Yes. Other activity controls include your YouTube history
5 setting, which controls if the videos you watch and the things
6 you search on YouTube are saved in your Google Account.

7 The location history setting, that's not an account
8 creation, but it is here on this activity controls page, if we
9 could scroll it. That saves information about where you go.

10 And ad personalization, which doesn't control saving of
11 data, it's a control to choose what data ads can use to
12 personalize your experience.

13 **Q.** So -- but you mentioned -- we've talked about Web & App
14 Activity. You mentioned YouTube history, location history, and
15 ads personalization?

16 **A.** That's correct.

17 **Q.** Are YouTube history and location history, are those also,
18 quote/unquote, activity controls?

19 **A.** Yes, they are.

20 **Q.** Were those also described with respect to data saved in
21 your account, or are they described in some different way?

22 **A.** No. Always described as data saved in your account, just
23 like it says at the top of the page.

24 **Q.** Why are there so many activity controls?

25 **A.** Some people might say there aren't enough activity

1 controls. I think the challenge that we have, as a company
2 with so many users, like I mentioned before -- you know,
3 3 billion users is a lot of people and a lot of opinions -- is
4 that we try to strike the right balance of the different main
5 categories of data.

6 And the categories that we just discussed, like your
7 Web & App Activity for, you know, most of your Google services,
8 YouTube history for the things on YouTube, locations that
9 happen, you know, kind of as your timeline map, and the way ads
10 are used, we've just kind of found to be the main categories
11 that users think of. So that's where we've aligned as kind of
12 the right balance of settings.

13 **Q.** On the screen here, this foam board that we have of
14 activity controls, it uses the term "Saved in your account
15 helps give you more personalized experiences."

16 Can you just explain, in your own words, what
17 "personalized experiences" mean?

18 **A.** Sure. I think, most simply, what personalized experiences
19 or personalization means is really using your history, data
20 saved in your account, to change your experience to make it,
21 hopefully, more relevant to you.

22 **Q.** Can you give us a concrete example of what you mean by
23 that?

24 **A.** Sure. One of my favorite examples that you can try
25 yourself is that if you go to Google Search and you search for,

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1 like, funny pet videos. I have two dogs. I have -- one of
2 them is a puppy. My search history is full of things, like:
3 What's safe for a dog to eat? What kind of, like, dog food to
4 feed a Whippet, things like that.

5 I'm probably going to see a lot more dog videos in my
6 search results. But if you're interested in cats, if you're
7 searching for how to adopt a kitten or trying to find out about
8 cat allergies, you might see more cat videos than dog videos.

9 In that same search, you would get different results than
10 I would get.

11 **Q.** Now, you said your search history has a bunch of
12 dog-related searches in it. I take it you have WAA on?

13 **A.** I do have WAA on.

14 **Q.** If you had WAA off, would those search results be in
15 there?

16 **A.** They would not, and Google would not know, then, to show
17 me more funny dog videos.

18 **Q.** So if you had WAA off and I had WAA off and we both
19 searched for funny pet videos, would we get similar results?

20 **A.** Yeah, we would.

21 **Q.** Does personalization -- that's a nice and cute example of
22 personalization. Does personalization also involve targeting
23 of ads?

24 **A.** Yes. Personalization is one type of ad targeting that
25 would use your history saved in your account to choose the

1 right ads to show you.

2 Q. So if you and I both have WAA on, our search history is in
3 there, we might be seeing different ads as we move through the
4 Internet --

5 A. Yes.

6 Q. -- based on our search history?

7 A. That's correct.

8 Q. How is that different if WAA and sWAA are off?

9 A. If WAA and sWAA are off, that data -- your history isn't
10 saved in your account, which means the data just isn't there
11 for ads to personalize on. Ads can't personalize on data not
12 saved in your account when you're on Google.

13 Q. So if you and I have WAA off and sWAA off and we visit the
14 same web page from the same computer at the same time, would we
15 see the same ads?

16 A. We'd probably see similar ads, yes.

17 Q. They wouldn't be personalized to you or to me?

18 A. That's correct.

19 Q. Why would Google give users the ability to prevent it from
20 serving personalized advertising?

21 A. I mean, we always have. We launched Web & App Activity
22 more than 20 years ago. I think Google has always cared about
23 these types of controls and wanted to put users in control of
24 their experience.

25 Not everybody is the same. A lot of people like

1 personalization, but not everybody wants everything to be
2 personalized all the time. So we give these toggles to turn
3 things on and off.

4 **Q.** Do people, in your experience, turn them on and off, or is
5 it like people have it on all the time or off all the time?

6 **A.** People definitely turn them on and off. I turn them on
7 and off myself. I mean, I have a ten-year-old son who's not
8 allowed to have a phone but uses my phone a lot. If you have
9 kids, everyone knows kids will take your phone. And I might
10 turn Web & App Activity off when he's using my phone so that
11 his weird fourth grader stuff doesn't get saved into my
12 history, which would then change the recommendations of stories
13 that I see in my newsfeed, for example.

14 So it's an easy way to exclude a chunk of data from my
15 account when I want to.

16 **Q.** What if, instead of wanting to prevent your ten-year-old
17 from affecting your personalization, you want to hide
18 information from Google so that you don't get targeted ads
19 about something that is private to you? Would you turn WAA off
20 then?

21 **A.** Yes, I could turn WAA off then.

22 **Q.** Would that work? Would that work if you wanted it to be
23 private?

24 **A.** I mean, that would mean that ads could not be based on any
25 of my history because the history is not saved in my account.

1 Q. Doesn't Google lose money by giving people the ability to
2 prevent it from personalizing advertising?

3 A. Yes, I believe it does.

4 Q. Can you just -- I want to make sure we've covered sort of
5 a little bit more about what Web & App Activity covers.

6 We've talked about Google Analytics in this trial. What
7 other kinds of data go into Web & App Activity?

8 A. Sure. A lot of our kind of information products save data
9 as part of your Web & App Activity. So if you use Google Maps,
10 the places you search for and that you click to view, those get
11 saved in Web & App Activity so we can personalize the places
12 that we put names on when Maps opens the next time.

13 If you are on an Android phone, like I am, and you use the
14 Google Play Store, the apps that you search for and the ones
15 that you click, Play will use those to recommend other related
16 apps. Like, if you're into a particular type of game, you
17 might discover a new similar game.

18 Google Assistant saves conversations that you have when
19 Web & App Activity is on to personalize it. So if you say,
20 "Call Dad," it's going to ask you, "Well, who's Dad? Which
21 contact is Dad?" Well, when WAA is on, Google Assistant can
22 learn and recommend that in the future, when you say "Call
23 Dad," you mean Mr. Monsees in this contact.

24 Q. Now, would any of that be saved in a Google Account when
25 WAA is off?

1 **A.** No.

2 **Q.** So there's these checkboxes under WAA. The first one is
3 the sWAA checkbox that this case is about. Why are there these
4 subsettings under WAA?

5 **A.** So Web & App Activity covers, I think we've mentioned, the
6 things you do on Google sites and apps, like Google Search,
7 Google Maps, Google Assistant, we just mentioned. What sWAA
8 allows a user to do is to extend that to then also include
9 things they do on third parties, like the websites they visit
10 in Chrome or the types of information that service -- that
11 companies that use Google services, like Google Analytics for
12 Firebase, send to Google.

13 **Q.** Do you have sWAA on?

14 **A.** I do.

15 **Q.** Why?

16 **A.** Because I personally get a lot of value, particularly from
17 my Chrome history, in recommendations.

18 **Q.** Does the data that sWAA adds to the WAA bucket, does that
19 include Google Analytics data?

20 **A.** Yes, it can.

21 **Q.** And what kind of Google Analytics data are we talking
22 about?

23 **A.** It's the information that app and website developers who
24 use Google Analytics choose to send to their Google Analytics
25 service. When sWAA is on, that data can then also be saved to

1 your Google Account.

2 Q. What about when the user turns sWAA off? Then does
3 Google Analytics data get saved to a user's account?

4 A. No, it does not.

5 Q. Does Google refuse entirely to accept Google Analytics
6 data in any form when a user turns sWAA off?

7 A. No, it does not.

8 Q. So Google Analytics data can still come to Google. It's
9 just not saved in the Google Account?

10 A. That's correct. I mean, we couldn't provide app and site
11 developers the features of Google Analytics if we didn't
12 collect the analytics. So it wouldn't make any sense to stop
13 that data from still being used for those essential purposes.

14 Q. And you don't have a concern that that affects user
15 privacy?

16 A. No. I've never heard about this being a concern until I
17 heard about this case.

18 Q. Well, you heard about this case when it was filed
19 five years ago; right?

20 A. That's correct.

21 Q. I think you said yesterday you've been working on this for
22 years?

23 A. Yes.

24 Q. What did you mean by that?

25 A. I was made, I think, aware of this case fairly early, and

1 I've been asked questions to help produce information for this
2 case that we've looked at.

3 **Q.** Did you -- in the five years since this case was filed,
4 did you consider that maybe the plaintiffs' lawyers' theory is
5 correct and that users are concerned, that this isn't just
6 about in your account, it's also about de-identified data? Did
7 you ever consider that?

8 **A.** I mean, I've looked at the Web & App Activity text so many
9 times since this case was filed; and, you know, though we've
10 made some minor text changes and we've launched some new
11 features around it, I think we've found that it is still
12 accurate. It's still saying that this is about data saved in
13 your Google Account, and we didn't make any -- any, you know,
14 real changes against it.

15 **Q.** You gave earlier the example for WAA-off data of a server
16 log when somebody searches something on Google -- or, excuse
17 me -- when somebody loads the Google page. That's kind of a
18 technical example.

19 Can you give us a more accessible example of what WAA-off
20 data looks like?

21 **A.** Sure. How about instead of WAA off, we talk about YouTube
22 as a great example?

23 So I mentioned we saw that there's a YouTube history
24 setting when you create your account here on activity controls.
25 It does the same thing as WAA, saves data to your

1 Google Account.

2 And if a user turns YouTube history off, it won't save
3 that data to their account. So your YouTube recommendations
4 can't be based on that.

5 But think about what that would mean if YouTube didn't
6 save any data at all. Like, if everyone in this room turned
7 their YouTube history off and we all watched a MrBeast video --
8 right? It's very popular on YouTube -- that would mean that
9 the watch counter couldn't increment. We wouldn't be logging
10 the activity anywhere.

11 We couldn't pay MrBeast for the videos that we've watched.
12 As a content creator, his career is getting paid for the videos
13 he makes and the number of views that those get.

14 So there are these essential things just to make YouTube
15 and its creators work that need to happen even when YouTube
16 history is off.

17 Now, that data is not tied to a Google Account. It's all
18 de-identified. And we don't need a Google Account to provide,
19 you know, MrBeast's, you know, view counts and stuff, but it's
20 still necessary to process that data.

21 **Q.** I want to make sure we understand your answer,
22 Mr. Monsees.

23 So just to be clear, the YouTube history account is
24 another activity control?

25 **A.** That's correct.

1 Q. Excuse me. Now I'm not being clear.

2 A. Sorry.

3 Q. The YouTube history button is another activity control?

4 A. That's right. It's just below here if we scrolled up on
5 this board.

6 Q. If we can scroll this board.

7 Okay. And so it's also limited to data in your
8 Google Account?

9 A. That's correct.

10 Q. And so when somebody has YouTube history on and they watch
11 videos, that affects the videos that are recommended to them?

12 A. That's right.

13 Q. And when they have YouTube history off?

14 A. Then that data is not saved to their account, you can't
15 resume that video where you left it off, and you won't see
16 recommendations or personalization based on that data.

17 Q. So if I have YouTube history off, which is an activity
18 control like WAA, and I watch a YouTube video, does Google save
19 nothing about the fact that I've watched the video?

20 A. Google will save nothing about the fact that you watched
21 the video, but it will save the fact that someone watched the
22 video so we can increment those counters and make sure the
23 service works as it's designed.

24 Q. I think you said yesterday that being able to save
25 de-identified data is essential to Google's ability to know

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1 what to charge and know what to pay people. Can you just
2 explain that answer in the context of what you just said?

3 **A.** Yeah. If Google can't save that de-identified watch, that
4 view of the MrBeast video that we were talking about, then we
5 wouldn't know that someone else watched his video; we wouldn't
6 know how much to pay him as the creator of that content. And
7 so having that kind of essential information to run and operate
8 the service is essential.

9 **Q.** Now, as the person who has been in charge -- I'm sorry.

10 Are you also in charge of the YouTube history control?

11 **A.** The YouTube history control does show up on activity
12 controls, so I collaborate with the YouTube Team on making sure
13 that it works and it's clear to users here.

14 **Q.** Okay. So it's been your job for 12 years to clearly
15 describe not just Web & App Activity, but also YouTube history?

16 **A.** That's correct.

17 **Q.** Okay. In the 12 years that you have been doing that job,
18 have you ever been concerned that by saving the fact that
19 somebody watched a YouTube video and so we put the watch
20 counter up by one, that you were misrepresenting what this
21 button does?

22 **A.** No, I never have. These settings have always been about
23 saving data in your account to personalize your experience, and
24 I've never seen any users confused about that fact.

25 **Q.** Now, you don't deny, Mr. Monsees, that people have been

1 confused over time about aspects of Web & App Activity, do you?

2 **A.** No, I don't deny that.

3 **Q.** Can you describe just one example of the type of confusion
4 that you have encountered about Web & App Activity in the
5 12 years you've been in charge of it?

6 **A.** Sure. Most often I see users confused about how data is
7 being, you know, saved, how long it's being saved, what data is
8 being saved under Web & App Activity. And we've, I think, done
9 a lot to try to, like, make that easier for users to understand
10 which products are part of your Web & App Activity. I
11 mentioned we added the icons, for example, we added
12 illustrations, things to try to make it clearer, just as one
13 example.

14 **Q.** What else have you done in the last 12 years? I think you
15 talked about this a little bit. Just give us one more example
16 of something that you have done in the last 12 years to respond
17 to user confusion about Web & App Activity.

18 **A.** Well, we have updated the text. I think, as we mentioned,
19 this text is kind of the same in its idea, but we've tried to
20 simplify it, clarify it.

21 We've made a bunch of other changes on our Help Center
22 articles where "Learn more" takes a user to, to try to give
23 more examples for a user to understand the settings.

24 We've added additional frequently asked questions
25 sections. So we've really tried to give a lot of -- kind of in

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1 that progressive disclosure spirit, more information to users
2 who may be confused.

3 Q. Now, you understand, Mr. Monsees, just from your
4 questioning yesterday, that the plaintiffs' lawyers think that
5 when a user turns sWAA off, that means Google Analytics should
6 be disabled from sending any data to Google at all. Do you
7 understand that?

8 A. Yes, I do.

9 Q. Did Google intend for this control to determine whether
10 data can be received by Google from Google Analytics in any
11 form?

12 A. No. That's never been our intent.

13 Q. Can you understand, Mr. Monsees, how a user might be
14 confused by this description and maybe even come to the same
15 conclusion as the lawyer who was questioning you yesterday?

16 A. I mean, I think with so many users with different
17 expectations, they could be; but we have done so much work to
18 try to make it clear to our users that this is within their
19 Google Account, this is a control for your experience when
20 you're signed in with your Google Account, that I really think
21 we've done our best to make that clear.

22 Q. In the five years since this case was filed, have you
23 considered making changes to this to add the phrase "in your
24 Google Account" a few more times, make it -- maybe mention
25 de-identified data on this page, add more information?

1 **A.** I mean, just given that this concern has never come up
2 until I heard about this case and I haven't heard questions
3 about it again outside of this case, and if we repeated
4 Google Account any more on this page, it would get a little
5 overwhelming, we just haven't decided to make those changes. I
6 just don't think they're necessary.

7 **Q.** What about just describing -- I mean, have you considered
8 describing, "We're going to save de-identified data even if you
9 have WAA off"? Why not put that on the page?

10 **A.** Well, we do provide links to users to the privacy policy,
11 and we do tell them about other information Google collects,
12 and why, is available on Policies@Google.com. So we do
13 actually try to connect them with more information if that's
14 what they're looking for.

15 **Q.** Okay. I'll make sure to pull up -- pull up the privacy
16 policy.

17 Before we do, though, I want to look at what it says when
18 a user clicks "Learn more." So, first, let's just pull up --
19 just so we have the actual exhibit up, let's pull up
20 Exhibit 84.

21 Mr. Monsees, I believe this was admitted yesterday. When
22 was this activity controls page in effect at Google?

23 **A.** I believe the exhibit we're looking at is from 2022.

24 **Q.** And this case deals with a time period of 2016 to 2024.

25 Did the activity control page -- excuse me.

1 Did the activity controls page look like this that whole
2 time?

3 A. Pretty much. Some of the images and the styling has
4 changed through the years, but basically the same.

5 Q. What about -- let's just start with the language at the
6 top, sort of, eighth of that page. It says -- I want to ask
7 you about the phrase "in your account" there in the first
8 sentence.

9 A. Yes.

10 Q. Starting with that fourth word and, again, the phrase "in
11 your account" in the second sentence, those last four words.

12 Has that phrase been on the activity controls page the
13 entire period 2016 to 2024?

14 A. I think the exact wording has changed a little bit, but
15 those -- the idea of your Google Account has always been on the
16 page.

17 Q. All right. And you're responsible for this language?

18 A. That's correct.

19 Q. And you have been, I guess, the entire class period?

20 A. Yes, that's correct.

21 Q. Okay. So can you read to the jury, please, exactly how
22 you chose to describe activity controls to users?

23 A. Sure. It says here [as read]:

24 "The data saved in your account helps give you
25 more personalized experiences across all Google

1 services. Choose which settings will save data in
2 your Google Account."

3 Q. Is the reference to personalized experiences the same as
4 you mentioned before?

5 A. That's the same personalization we've been talking about,
6 yes.

7 Q. And the reference to "in your Google Account," I assume is
8 the same as you've been discussing.

9 A. That is the same.

10 Q. What about what it says below that?

11 A. So we have some additional information for users looking
12 for it. It's called Safer with Google. It says here [as
13 read]:

14 "You control what data gets saved to your
15 account."

16 And if you click "Learn more," it would take you to this
17 site with not just privacy, but also security options you can
18 learn about.

19 Q. Now, in your email to Mr. Rueemler from before the case
20 was filed, when you mentioned associating data with a person's
21 identity, were you referring to the distinction that's drawn
22 here related to "in your account"?

23 A. Yes.

24 Q. Now, let's look at the next piece of this page, starting
25 with the logo there down to the turn-on button.

1 A. (Witness examines document.) Sure.

2 Q. So we've looked at this. Why doesn't it say "in your
3 Google Account" right here under the words "Web & App
4 Activity"?

5 A. Well, I think a user sees these settings, these cards
6 directly beneath the descriptions that we had just read.
7 They're also in their Google Account, literally that page; and
8 depending on the UI, you also see your profile photo up on the
9 top right.

10 Q. This is a computer monitor. These are TVs.

11 On a mobile phone, how much distance did you design this
12 to be between these three references to "in your
13 Google Account" and the description of WAA?

14 A. It's all basically the same text. The formatting is just
15 a little bit, you know, narrower for a mobile phone. They're
16 still very close.

17 Q. So how far away would you say?

18 A. Oh, they would show up on the same screen. I think you'd
19 see your account profile when you see WAA.

20 Q. You would see it all at once?

21 A. Yes.

22 Q. Kind of like this?

23 A. Yes. Yes. This is on a mobile phone, yes.

24 Q. So -- well, we created -- I want to be clear. We created
25 this for the purposes of the trial, but you have experience

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1 with the screen.

2 When you pull it on a real mobile phone, do you see all of
3 that kind of at once?

4 **A.** Yes. I look at this screen all the time.

5 **Q.** All right. Now let's look at the next section of this
6 page.

7 Just to confirm, Mr. Monsees, can you point out where sWAA
8 is?

9 **A.** Sure. SWAA is that first checkbox beneath where it says
10 "subsettings." So these are subsettings of Web & App Activity.
11 And it says [as read]:

12 "Include Chrome history and activity from sites,
13 apps, and devices that use Google services."

14 **Q.** Why didn't you mention "in your Google Account" on this
15 sentence?

16 **A.** Well, I think as a subsetting, it's clear to users that
17 this is part of their Web & App Activity, which we already
18 discussed is clear, I think, that it's part of their
19 Google Account.

20 **Q.** Okay. So right under Web & App Activity, it says "Learn
21 more." What happens when you click on it?

22 **A.** So when you -- oh, sorry. You mean this "Learn more"
23 here?

24 **Q.** I don't, actually. Let's go back to the middle of the
25 page.

1 The Web & App Activity language, it says "Learn more" at
2 the end there.

3 A. Yeah.

4 Q. What happens when you click on that if somebody's
5 interested?

6 A. That's a learn more about Web & App Activity that would
7 open an additional help article that we have that explains in
8 quite a lot more detail both what Web & App Activity is and how
9 to use it if you have questions around how to turn it on and
10 off.

11 Q. So -- and I want to be clear about something. Users are
12 not required to click on "Learn more" in order to turn
13 Web & App Activity on and off?

14 A. That's correct.

15 Q. So it's possible that there are people from 2016 to '24
16 who clicked on "Learn more"?

17 A. Oh, definitely.

18 Q. It's possible there are people from 2016 to 2024 who have
19 WAA off but never clicked "Learn more"?

20 A. Yes.

21 Q. Okay. Let's take a look at where that takes you. Let's
22 look at Exhibit 113, which was admitted yesterday.

23 Is this where the "Learn more" button goes?

24 A. Yes, this is.

25 Q. I think yesterday we skipped to the middle of the page,

1 but what I want to do is look at the very top.

2 Just read for the jury how you begin to describe the
3 Web & App Activity button on the "Learn more" page.

4 **A.** Sure. It says [as read]:

5 "If Web & App Activity is turned on, your
6 searches and activity from other Google services are
7 saved in your Google Account, so you may get more
8 personalized experiences, like faster searches and
9 more helpful app and content recommendations."

10 **Q.** Has a phrase like that, saved in your -- that it controls
11 "saved in your Google Account," has that been on this
12 "Learn more" page the entire time since 2016?

13 **A.** Yes.

14 **MR. SANTACANA:** All right. We can put that away.

15 Just a few more questions, Your Honor. Maybe a break. I
16 don't know what you were thinking in terms of timing.

17 **THE COURT:** I was going to go till about 10:15, but --

18 **MR. SANTACANA:** Great. I can keep going.

19 **THE COURT:** Okay. Is that -- in terms of the jury, I
20 was shooting for 10:15. Is that fine for everybody for a
21 break?

22 Okay. Go ahead.

23 **BY MR. SANTACANA:**

24 **Q.** Okay. So, Mr. Monsees, what happens when you click
25 "Turn on"? Does the user see anything else?

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1 **A.** Yes, they do. When you click "Turn on," there's a pop-up
2 that explains additional information about Web & App Activity
3 that a user can see before they actually agree to turning the
4 setting on.

5 **Q.** What about when they -- if they just go straight to SWAA
6 and they turn SWAA on, do they see something?

7 **A.** Yes. They'll see a pop-up telling them they can't turn
8 SWAA on unless WAA is on. Since SWAA's a subsetting, WAA has
9 to be on before SWAA can be turned on.

10 **Q.** What about when a user turns WAA or SWAA off? Are they
11 shown anything when they turn it off?

12 **A.** Yes. There's also a pop-up for turning off that gives
13 them additional information they might need to know when they
14 move forward.

15 **Q.** Okay. I'd like to show you what's been marked for
16 identification as Exhibit 607.

17 **A.** I don't have that.

18 **MR. SANTACANA:** Can we get the binder?

19 **BY MR. SANTACANA:**

20 **Q.** While we're doing that, Mr. Monsees, have you, in the
21 course of your work, been called upon to document what this
22 language looked like over time?

23 **A.** Yes, I have. I regularly pull histories of language for
24 our settings.

25 **Q.** What's that?

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1 **A.** Yes. I regularly pull histories of language for our
2 settings like this.

3 **Q.** Why do you pull histories of language?

4 **A.** Well, as the product manager responsible for these
5 settings, I often get questions; or I'll look at, over time,
6 how we've, you know, improved and changed the descriptions, the
7 text.

8 **MR. SANTACANA:** Okay. Your Honor, may I approach,
9 please?

10 **THE COURT:** Yes.

11 **BY MR. SANTACANA:**

12 **Q.** I apologize, Mr. Monsees. I thought you already had this.

13 **A.** No problem.

14 **Q.** This is your other binder.

15 **A.** Okay. Thank you.

16 **Q.** Okay. And you have two volumes there.

17 **THE COURT:** We keep the binder people in business in
18 these trials.

19 (Laughter.)

20 **THE WITNESS:** Wow, yeah. I feel bad for the trees.

21 **THE COURT:** Thank you.

22 **BY MR. SANTACANA:**

23 **Q.** Okay. So now I'd like to show you what's been marked for
24 identification as Exhibit 607.

25 Do you recognize Exhibit 607?

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1 **A.** Yes, I do.

2 **Q.** What is it?

3 **A.** This is a document that I prepared basically showing the
4 historical descriptions of the Web & App Activity and
5 supplemental Web & App Activity settings.

6 **Q.** Why did you prepare this set of historical descriptions?

7 **A.** As I mentioned, I prepared things like this regularly as
8 part of my job overseeing these settings.

9 **Q.** What procedure did you follow to prepare these historical
10 descriptions?

11 **A.** So to make sure that the dates were accurate here, I
12 worked with an engineer on the Footprints Team to actually go
13 through the source code that we have for this page so we could
14 see exactly what was in the code at the time of these dates.

15 **Q.** Is the source code that you're consulting to prepare this,
16 does that record changes of source code as the changes are
17 made?

18 **A.** Yes, it does.

19 **Q.** And the language that is on this document that you
20 prepared is the language represented in that source code?

21 **A.** That's correct.

22 **MR. SANTACANA:** Your Honor, I offer into evidence
23 Exhibit 607, the authenticity of which has been stipulated.

24 **MR. CARMODY:** No objection.

25 **THE COURT:** 607 will be admitted.

(Trial Exhibit 607 received in evidence.)

BY MR. SANTACANA:

Q. Could you please explain to the jury how you organized this document?

A. Sure. So what we did is we basically structure this so we have the description of the Web & App Activity setting. If we look at the board, it's what's displayed right underneath that illustration.

And then the description of the supplemental Web & App Activity setting, that's the text next to the checkbox.

And then if we move forward a little bit, there is a section about WAA, and then later sWAA, consent text.

Q. What page are you looking at?

A. Sorry. I'm looking on page 2, the heading on 2. Ah, yes, right there.

This is the text that would show up when you click "Turn on." This is what's in the pop-up I described just a minute ago.

Then we have the same thing in here for sWAA on the top of page 4. That's what would be in the sWAA pop-up.

And then if we go to page 6, this is the text that would show up in the pop-up if WAA was already on and you were turning it off. This would be the turn-off pop-up text. And then the same thing for the sWAA turning-off pop-up text.

Q. Okay. Let's focus on that page 6 for a moment.

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1 It says "Controls Revocation Text." Can you just explain
2 what that means?

3 A. Yeah. "Revocation" is just a word we use sometimes
4 internally to mean turning off.

5 Q. So when somebody turns off WAA or turns off sWAA, this is
6 the language that they would see when it pops up?

7 A. That's right, for these timelines here.

8 Q. Different over different time periods?

9 A. That's correct.

10 Q. All right. Let's look at the WAA-off pop-up, and just
11 read for the jury the beginning of that.

12 A. Sure. It says here that [as read]:

13 "Pausing Web & App Activity may limit or disable
14 more personalized experiences across Google
15 services."

16 Q. Now, the reference to "personalized experiences" there,
17 that's the same personalization we've been discussing?

18 A. That's correct.

19 Q. What about the language for when sWAA is turned off? Is
20 that language similar?

21 A. Yes, it's very similar.

22 Q. We can see that here.

23 Mr. Monsees, at any time from 2016 to now, has the
24 revocation text for WAA and sWAA ever mentioned that
25 de-identified data will not be collected?

1 **A.** No, it has not.

2 **Q.** Have you ever intended to promise users that if they
3 turned WAA and sWAA off, that disables not just
4 personalization, not just data saved in an account, it also
5 disables the collection of de-identified data?

6 **A.** No. That was never a goal.

7 **Q.** Is there any promise on the activity controls page that
8 you intended to make on behalf of Google to give users the
9 ability to disable entirely the flow of data to Google,
10 de-identified or not?

11 **A.** No. I wouldn't do that. It wouldn't make sense to
12 operate those products.

13 **Q.** Now, you've talked a lot about personalization; and
14 I believe you said that when WAA and sWAA are off,
15 personalization is disabled.

16 How do we know, how can the jury know that that is
17 actually enforced internally at Google?

18 **A.** So internally within Google Systems, any Web & App
19 Activity data saved in your account, any sWAA data also saved
20 in your account would be saved against that GAIA ID that we
21 talked about before. That's that unique ID that represents
22 someone's Google Account.

23 The data, when these settings are off, cannot be saved
24 against those IDs. It would violate policies. And so that
25 data would, therefore, have to be de-identified and, thus,

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1 would be impossible to use for personalization because we
2 wouldn't know what person to use it for, what Google Account to
3 use it for.

4 **Q.** Well, a policy is just a policy. We -- some of us, at
5 least, break rules all the time. What is to stop a user --
6 excuse me -- an employee at Google from writing code that will
7 personalize and use people's personal information even when WAA
8 is off?

9 **A.** Well, beyond the fact that that would violate internal
10 policies, which would and could get you fired for violating
11 internal policies, we also have technical systems in place.
12 For example, Footprints, the platform that I'm the product
13 manager for, we have code that basically makes sure that when
14 WAA is off, even if a system tries to write that data to your
15 Google Account, it's locked; it cannot be written.

16 So we have not only the policies and procedures that teams
17 follow, but we also have technical practices in place to try to
18 make these systems work, no matter what.

19 **Q.** To the best of your knowledge, are you aware of people
20 violating the policy and engaging in personalization at Google
21 or personally identifying users when they have WAA or SWAA off?

22 **A.** No. That would violate so many policies.

23 **Q.** Not in the 16 years you've been at Google?

24 **A.** Not in the 16 years I've been at Google.

25 **Q.** I'd like to show you what's been marked as

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1 identification -- for identification as Exhibit 569.

2 What is Exhibit 569?

3 **A.** This is an internal Google policy about the requirements
4 when doing personalization on user data and what systems teams
5 are expected to use to do personalization features.

6 **Q.** Are you -- it says authors -- one of the authors, it says
7 "Monsees@." Is that you?

8 **A.** Correct.

9 **Q.** You helped author this policy?

10 **A.** Yes, I did.

11 **Q.** Where within Google would you go to get this policy?

12 **A.** This is on our policies page.

13 **Q.** So you're personally familiar with this document?

14 **A.** Very familiar.

15 **Q.** And you've gone to your policies page to pull it?

16 **A.** Yes, I have.

17 **Q.** There's comments in the margins. Do you know why those
18 are there?

19 **A.** This was the draft when we were writing it. It was then
20 later added into the site's page, which is actually in code.

21 **MR. SANTACANA:** Okay. Your Honor, I offer into
22 evidence Exhibit 569.

23 **MR. CARMODY:** No objection.

24 **THE COURT:** 559 will be admitted.

25 **MR. SANTACANA:** 569, Your Honor.

1 **THE COURT:** 569 will be admitted.

2 (Trial Exhibit 569 received in evidence.)

3 **BY MR. SANTACANA:**

4 **Q.** Can you just point out to the jury, let's start with the
5 title. What does the title mean?

6 **A.** This title is about our policies around what data may be
7 used for personalization.

8 **Q.** And can you explain the summary to the jury, please?

9 **A.** Yeah. What the summary is saying here is that all
10 activity-based personalization -- so this is when we're using
11 history saved in a user's Google Account -- must be done using
12 Footprints -- that's the infrastructure I'm the product manager
13 for -- or other approved primary sources location history we
14 had mentioned briefly earlier.

15 **Q.** How does that protect your role as preventing
16 personalization when WAA is off?

17 **A.** Well, I mentioned that the Footprints infrastructure has
18 certain technical capabilities in it where we make sure the
19 data is only saved when WAA is on.

20 It also, I think, if I recall -- we'll see later down in
21 this document, we -- Footprints is designed to enforce things
22 like user deletions in order of seconds. So if you delete
23 something, it disappears from personalization.

24 So it's really a system built to safely serve user data in
25 a way that complies with our internal policies.

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1 Q. Does Google make exceptions to this and allow people to
2 engage in personalization or personally identifying users
3 outside of this technical structure?

4 A. There are sometimes situations where teams have an
5 approved and valid reason to do personalization on something
6 that -- on data that's not in Footprints. And so we have an
7 exceptions process where if a team can't follow this policy,
8 they'd say, "Hey, I can't follow this policy," and then we
9 would walk through it with them and make sure they're still
10 adhering to all of the internal Google policies.

11 Q. All right. I'd like to show you now what's been marked
12 for identification as Exhibit 587.

13 Can you just tell us what this document is?

14 A. Oh, yes. This is the internal Google user data access
15 policy, or UDAP, as we refer to it.

16 Q. What is the user data access policy?

17 A. This is one of Google's internal security and privacy
18 policies. We can see it here on the policies site that every
19 Googler has access to and --

20 Q. Where would you go to pull this up inside of Google?

21 A. There are a few different ways to get to this policy
22 repository, this site that we're looking at. We have an
23 internal search engine. So if you just type in "user data
24 policy," this would be the first result.

25 Q. What are the rules -- do you consult this policy as part

1 of your job?

2 **A.** Yes. This is, I think, one of the more important policies
3 that I deal with.

4 **Q.** Do you consult it regularly or just episodically?

5 **A.** I would say pretty regularly.

6 **Q.** Why?

7 **A.** Well, because, as I think we've mentioned, a lot of what
8 my job focuses on is user data, data saved in the user's
9 account, personal information, and this policy lays out a lot
10 of rules around when data can be saved and how data can be
11 read.

12 **Q.** And can you just explain to the jury, summarize, I would
13 say, sort of the gist of this policy? What is it trying to
14 say?

15 **A.** So the gist is, basically, that little top section peeking
16 out about obtaining access to user data --

17 **Q.** Okay.

18 **A.** -- gives you a pretty good sense of what this policy is
19 about.

20 Sorry.

21 **Q.** No. I was going to say, let's highlight it then.

22 **A.** Oh, yeah. If we can, that would be great.

23 **Q.** Sure. "Obtaining access to user data" and those top
24 couple bullets?

25 **A.** Yeah. So this is basically saying here that --

1 **THE COURT:** You haven't moved to admit this yet, so
2 the jury isn't seeing --

3 **MR. SANTACANA:** Oh, I'm sorry, Your Honor. I skipped
4 right over that. Thank you, Your Honor.

5 I move to admit Exhibit 587 into evidence.

6 **MR. CARMODY:** No objection.

7 **THE COURT:** All right. Exhibit 587 will be admitted.
8 (Trial Exhibit 587 received in evidence.)

9 **THE COURT:** I'll also just use this document to take
10 the opportunity to mention to the jury, you're going to be
11 seeing -- you've already seen -- a lot of documents coming --
12 flowing in; and you'll see, on these documents, at the bottom
13 of them, there are -- on the right side, there are numbers and,
14 on the left side, sometimes it'll say "Confidential." That's
15 simply for purposes of tracking these documents in this case.
16 Those numbers and that other designation, they were not on the
17 original documents.

18 And you're going to see this on virtually every document
19 that gets admitted into evidence, but they weren't part of the
20 original document. They're only for tracking purposes. So you
21 should just ignore those designations at the bottom of these
22 documents.

23 Okay. We probably should go ahead and take our break at
24 this point.

25 Members of the jury, please remember, do not discuss this

1 amongst yourselves or with anyone else during the break.

2 R.J., can you move that back against the wall?

3 **MR. SANTACANA:** We can do it, Your Honor.

4 **THE COURT:** Well, he's handy.

5 (Proceedings were heard out of the presence of the jury.)

6 **THE COURT:** I didn't say how long, but let's try to
7 resume at 10:30.

8 (Recess taken at 10:14 a.m.)

9 (Proceedings resumed at 10:33 a.m.)

10 (Proceedings were heard out of the presence of the jury.)

11 **THE COURT:** Are we ready to bring them out?

12 **MR. SANTACANA:** Yes, Your Honor.

13 **THE COURT:** Okay.

14 (Proceedings were heard in the presence of the jury.)

15 **THE COURT:** The jury is present.

16 Mr. Santacana, you can proceed.

17 **MR. SANTACANA:** We seem to be missing a witness,
18 Your Honor.

19 **THE COURT:** Oh, I guess you can't proceed.

20 **MR. SANTACANA:** There he is.

21 **THE COURT:** You can ask me questions.

22 (Laughter.)

23 **MR. SANTACANA:** I thought maybe you'd run away.

24 **THE WITNESS:** Not yet.

25 **THE COURT:** Do you want the demonstrative back?

1 **MR. SANTACANA:** Yeah, that would be great, but --

2 Thank you, R.J. Appreciate it.

3 (Pause in proceedings.)

4 **MR. SANTACANA:** Thank you very much.

5 **BY MR. SANTACANA:**

6 **Q.** Mr. Monsees, we were talking about Exhibit 587. Let's
7 pull that back up, the user data access policy, which I had not
8 displayed to the jury while we were talking about it, so I
9 wanted to make sure it was clear to them.

10 So "User Data Access Policy" here at the top, where do you
11 go to pull this policy?

12 **A.** I had mentioned that this is on Google's internal security
13 and privacy page, which you can -- any Google employee can
14 access through a couple of different ways.

15 **Q.** And I believe you were directing us to the section that
16 begins "Obtaining Access to User Data."

17 **A.** That's correct.

18 **Q.** But which portion of this did you want to direct us to?

19 **A.** So I personally, and I think Googlers that use user data,
20 care about all of this. But what I think -- there's a couple
21 points here that, I think, make a really good kind of point
22 about what we've been talking about.

23 And the first bullet here, that "User Data access is only
24 granted for authorized, valid Google business purposes," kind
25 of ties into the second bullet as well about how it must be

1 authorized. It's the same word.

2 This basically means that for any product team to read
3 user data, that they have to go through a request process.
4 There are policies that then are checked, and then we certify
5 those sometimes by different explicit rules that check those
6 things, like our Privacy Working Group that we have.

7 So that gives a sense of how, say, Web & App Activity data
8 would be read.

9 And then I think we look at the third -- yes, the third
10 bullet, "Authorization to access personally identifiable user
11 data may require user consent." That sounds a little bit
12 confusing, but basically, what that is saying is that,
13 depending on the type of data, there might be other controls
14 required in place to be able to read data.

15 And this -- also, you'll notice that a lot of these
16 bullets point users to other policies where they can learn
17 more. Sorry. By "users," I mean Google employees.

18 And so I think those were kind of the main points that I
19 wanted to -- that I thought kind of summarized, like, what
20 Footprints does and the types of policies that we both enforce
21 through working with teams, but also technically enforce as
22 well.

23 **Q.** So I'll ask you what I asked you about the other policy.

24 In your time at Google, are you aware of anybody who
25 violated this policy and used user data that -- when WAA was

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1 off?

2 **A.** No, I'm not.

3 **Q.** Okay. We can take that down.

4 I'd like to show you what's been marked for identification
5 as Exhibit 574.

6 **A.** Oh, yes.

7 **Q.** Mr. Monsees, what is Exhibit 574?

8 **A.** This looks like a piece of a document that I helped
9 prepare for a judicial proceeding in Australia.

10 **Q.** It is a piece of a document? The real document -- or the
11 whole document was longer than this?

12 **A.** I think, yeah, quite a bit longer than what I see in my
13 binder.

14 **Q.** What -- did you prepare this document?

15 **A.** Yes, I did.

16 **Q.** Why did you prepare this document?

17 **A.** I mentioned that this was for a judicial proceeding in
18 Australia. So I was requested to work with some other teams to
19 assemble these different screenshots and explain kind of what's
20 happening on each of these screenshots.

21 **MR. CARMODY:** Your Honor, may we approach?

22 **MR. SANTACANA:** Your Honor, I'd prefer to lay some
23 more foundation first.

24 **THE COURT:** Go ahead.

25 **MR. SANTACANA:** Thank you.

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1 **BY MR. SANTACANA:**

2 **Q.** Mr. Monsees, you said "screenshots." What are the
3 screenshots of?

4 **A.** These are screenshots of the account creation flow,
5 I believe, on an Android device.

6 **Q.** When you say "flow," what do you mean?

7 **A.** Sorry. By "flow," if you recall the video that we walked
8 through earlier today, that was nice and moving. The
9 screenshots are basically taking, like, one snapshot of each of
10 those steps. The flow is basically going through the whole
11 thing.

12 **Q.** What procedure did you follow to create this document?

13 **A.** Similar to other documents that I have created, I went
14 through to make sure that these were technically accurate in
15 our systems. At Google, we have systems where we save these,
16 like, screenshots of these flows.

17 And then I worked closely with the team that actually put
18 the binder together to provide those annotations that we can
19 see, what looks like comments on the right-hand side that
20 explains what's happening on the screenshot.

21 **Q.** Was it challenging to assemble this?

22 **A.** Yes. It took some time.

23 **Q.** You mentioned this was in a judicial proceeding in
24 Australia. Are these consent flows, these screenshots, are
25 they just what was shown to Australians?

1 A. No. They should be consistent with what anyone in the
2 United States would have seen, though you might see Australia
3 or ".AU" on something instead of ".com."

4 Q. Okay. So apart from pages where it might say "Australia"
5 instead of "U.S.," is there any difference in these screenshots
6 between what was used in Australia and what was used in the
7 United States?

8 A. No. They would be the same.

9 Q. There's comments in the marginalia, what are those?

10 A. These comments are effectively explaining what the -- kind
11 of the different links or parts of the screenshot a user could
12 click on. So we can see, like, this top one says that if a
13 user tapped -- oh, sorry.

14 Q. Please don't read it.

15 A. My apologies.

16 Q. No worries.

17 Go ahead, though. You can finish your answer.

18 A. No. Basically, what they're doing is they're describing
19 what would have happened if you tapped this link, and sometimes
20 their reference is to say, "Turn to page 15 to see what
21 page" -- "to see what screenshot you would have seen if you had
22 clicked on this."

23 Q. This was also written by you and your team?

24 A. That's correct.

25 Q. And what was the basis of what you were writing down?

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1 Was it just the memory of you and your team?

2 **A.** No. We went through and verified all this. We spent
3 quite a bit of time on this.

4 **Q.** What is the time period these screenshots apply to?

5 **A.** I believe this was done for a few different types of
6 devices, maybe from 2017 to 2019.

7 **Q.** And for this particular Exhibit 574, if you could just
8 take a look at it, is it a subset of that time period or that
9 whole time period?

10 **A.** This looks like, just from the heading, is a subset. It's
11 April of 2018 through October of 2019.

12 **MR. SANTACANA:** Your Honor, I offer this exhibit into
13 evidence.

14 **MR. CARMODY:** Ready to approach?

15 **THE COURT:** All right. And can we keep it to maybe
16 three people per side? We don't need everybody at every
17 sidebar.

18 **MR. CARMODY:** I think we can do it just with me.

19 (The following proceedings were heard at the sidebar:)

20 **MR. CARMODY:** I want to lodge the objection out of the
21 presence of the jury so as not to have a speaking objection in
22 front of them.

23 The first objection on this document, 57- -- Google 574,
24 is hearsay for a number of reasons. First of all, it's not a
25 business record because it wasn't put together at the time of

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1 or near the event. This is a court filing that we can see was
2 filed in 2020, yet refers to things that happened in 2018, 2019
3 that were years earlier.

4 Secondly, by definition, under Ninth Circuit law, the
5 *Clark* case and others we can cite to the Court, a court filing
6 is not kept in the ordinary course of business. It's not a
7 business record. It's a litigation record.

8 **THE COURT:** Well, but a court filing -- that begs the
9 question. It may have been a court filing. That doesn't mean
10 that's the only thing it is. It may have been a document --
11 simply because it is filed in court doesn't mean it's
12 automatically no longer a business record. The filing could
13 have been a business record.

14 **MR. CARMODY:** Well, filing in the ordinary course of
15 business, and this document, what the law says --

16 **THE COURT:** It's the underlying document that's
17 important, not the fact that it was filed in a court somewhere.

18 **MR. CARMODY:** And what this is based on, the next
19 thing I'd like to say, Your Honor, is everything in here has
20 been recreated. If you look at Screen 60, this is what they're
21 showing. This is what they want to show us is this screen is a
22 recreation of a screen, and it goes on and on.

23 They're not showing this right now to the jury, but what
24 this is, this is all based on internal Google source code.
25 That source code has never been produced. We can't question

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1 anyone on the accuracy of the source code.

2 So if we all step back and think about what's happened
3 here is, instead of this guy saying, "I've got a great memory.
4 I remember this disclosure here was somehow used in the U.S.,"
5 he's not saying that.

6 He's saying, "We have source code in Google that I've
7 seen, no one else has seen. It's not been produced in this
8 case. But that source code has enabled us to go back way after
9 the fact and show what we disclosed to people when, in
10 Australia. And I can remember we did it there, we did it in
11 America."

12 That is so many layers of hearsay that the underlying
13 source code, while that could be a business record if we went
14 through that and they produced it in this courtroom and in this
15 case, that's one thing, but he is extrapolating from that.

16 We do not need this document at all on a pure 403 basis.
17 Any probative value of this document outside of his pure memory
18 is substantially outweighed by the dangers of unfair prejudice
19 and confusion to the jury.

20 **MR. SANTACANA:** Your Honor, it's -- I don't understand
21 what the objection is to this document. This is a class
22 action, the basis of which is that everyone in the class saw
23 disclosures from Google.

24 They identified in their interrogatory response, where
25 they were asked to state all facts that form the basis of their

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1 allegations, that Google collected data without their
2 permission, that the plaintiffs' allegations were supported by
3 the ACCC action against Google for failing to obtain consent
4 from consumers.

5 The fact it was filed in Australia is neither here nor
6 there. It was also filed in the Arizona litigation. It's a
7 document that was created that has been filed multiple times
8 when it has been useful to file.

9 **THE COURT:** Let me get to the item itself and not the
10 filing in various courts.

11 This was not -- this was not kept in the ordinary course
12 of business. This was created for the litigation; correct?

13 **MR. SANTACANA:** It was generated from, as Mr. Monsees
14 testified -- and we can ask him more. But they took the source
15 code and make it spit out --

16 **THE COURT:** I understand.

17 **MR. SANTACANA:** -- what it showed at the time.

18 **THE COURT:** But not this part?

19 **MR. SANTACANA:** No. And I'd be happy to redact that
20 part, but it is a guide to what happens when you click --

21 **THE COURT:** I understand. But this -- your argument
22 for the core material. Then we have the objection whether or
23 not the source code was produced or what have you.

24 But what does seem to me to be the case is this was all
25 created -- this was not a business record kept in the ordinary

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1 course of business.

2 **MR. SANTACANA:** I'm happy to redact it, Your Honor.

3 **THE COURT:** All right. So you're going to have to do
4 that at the very least.

5 If he redacts the side panels, why not -- otherwise it's
6 just out of the -- as I understand it, the source code of
7 Google.

8 And, okay. It wasn't produced. The source code --

9 **MR. CARMODY:** No. I'm not going to the production
10 part. I'm way past that.

11 **THE COURT:** That's good.

12 **MR. CARMODY:** I really am. The document is an
13 out-of-court statement used to prove the truth of the matter
14 asserted.

15 **THE COURT:** But this part is a business record kept in
16 the ordinary course of business.

17 **MR. CARMODY:** No.

18 **THE COURT:** Not this part, but this part.

19 **MR. CARMODY:** This part here was created from source
20 code.

21 **THE COURT:** Which is kept in the ordinary course of
22 business.

23 **MR. CARMODY:** But he has -- we've never seen --

24 **THE COURT:** I understand. That's a different
25 argument.

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1 **MR. CARMODY:** Okay.

2 **THE COURT:** But this is -- on the business record
3 point, this is being spit out by the system that is in place in
4 the company in the ordinary course of business.

5 **MR. CARMODY:** In fairness, Your Honor, instead of on
6 the pure 403 issue, because it sounds like we can go back and
7 forth on hearsay as well --

8 **THE COURT:** You haven't convinced me on the 403 issue.

9 **MR. CARMODY:** I mean, any -- okay.

10 Do you want to say something, David?

11 **MR. DAVID BOIES:** What I want to say, Your Honor, is
12 this is a summary of the source code.

13 **THE COURT:** Yes, that's fair.

14 **MR. DAVID BOIES:** Every time you do a summary in court
15 of something, the other side has got to have the underlying
16 documents --

17 **THE COURT:** That's also true.

18 **MR. DAVID BOIES:** -- so they can check it.

19 **THE COURT:** The 1006.

20 **MR. DAVID BOIES:** 1006. That stuff was never
21 produced.

22 **THE COURT:** Well, I'm sure there was litigation about
23 the source code. I have litigation about source code in all
24 these cases.

25 **MR. SANTACANA:** They never requested source code in

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1 this case, Your Honor.

2 **THE COURT:** Did you ever request the source code?

3 **MR. CARMODY:** I honestly don't know.

4 **MR. DAVID BOIES:** No. But, Your Honor, I respectfully
5 suggest, it's not whether we requested the source code. It's a
6 1006 summary. They've got to produce the source code.

7 **THE COURT:** It has to be available. You have to ask
8 for it.

9 **MR. SANTACANA:** That's right.

10 **THE COURT:** 1006 says it must be available.

11 **MR. DAVID BOIES:** It must be available. It was never
12 available. Nobody ever gave it to us. In other words --

13 **MR. HUR:** Your Honor --

14 **MR. DAVID BOIES:** But, Your Honor --

15 **THE COURT:** Let's have one at a time.

16 **MR. DAVID BOIES:** Here, no -- in their interrogatory
17 answers, if they had said, "We're going to rely on this," we
18 would have appealed to you for the source code and everything
19 else.

20 The source code, unless it was going to be the basis of a
21 1006 summary, wasn't critical to the case. Okay? What's
22 critical to the case -- it becomes critical to the case when
23 they try to put in a 1006 summary. If they told us that they
24 were going to rely on this in the interrogatories, we would
25 have had a very different situation.

SIDEBAR

1 **THE COURT:** Well, okay. You're going to have to
2 redact this, and I don't know how you're going to do it up
3 there because I'm not going to let you show the jury this.

4 **MR. SANTACANA:** She can block out the right side
5 during testimony. But we're actually not going to spend much
6 time looking at it during this witness.

7 **THE COURT:** All right. Well, I will admit it, but
8 you've got to take out the items on the side panels. And,
9 otherwise, I think it comes in as a 1006 summary.

10 Frankly, I don't agree that they have to -- if they're
11 proposing a summary, they have to -- they have to say, "And
12 please look at the underlying material." You have to do
13 something proactively.

14 But we've had enough time.

15 **MR. SANTACANA:** Thank you, Your Honor.

16 **MR. CARMODY:** Your Honor, if they're going to do it,
17 the jury might as well see everything because it shows it's a
18 re-creation.

19 **THE COURT:** That's your choice.

20 **MR. CARMODY:** If they're going to show it now, if
21 that's your decision. We lodged our objection on the record.
22 We have requested the source code.

23 **THE COURT:** I'm not going to get into --

24 **MR. CARMODY:** I would rather, if they're going to do
25 this, put it all in.

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1 **THE COURT:** All right. If you want it all in, it goes
2 in.

3 **MR. CARMODY:** Don't you want the jury to see all this
4 stuff? Or no?

5 Okay. Never mind.

6 **THE COURT:** Okay. Take it out.

7 **MR. SANTACANA:** Take it out.

8 (The following proceedings were heard in open court:)

9 **THE COURT:** Thank you for your patience, members of
10 the jury. We're working away, getting things resolved.

11 All right. Mr. Santacana, you may proceed.

12 **MR. SANTACANA:** Okay. So, Brooklyn, if you wouldn't
13 mind, we are going to cut out the margins of this document so
14 that we can't see those; we just see the screenshot. Okay?

15 **THE COURT:** So Exhibit 574 is admitted as modified, as
16 we discussed.

17 (Trial Exhibit 574 received in evidence.)

18 **BY MR. SANTACANA:**

19 **Q.** Mr. Monsees, is this the excerpt of the document you
20 described creating?

21 **A.** Yes. This is the part excluding the margins on the right
22 side.

23 **Q.** Okay. Now, could you just flip for me, Mr. Monsees -- and
24 we'll do it on the screen as well -- to page 13.

25 **A.** Okay. I'm there.

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1 Q. Sorry?

2 A. I'm there.

3 Q. Now, earlier, we saw -- earlier, we saw you on a video
4 creating an account and being asked to select whether WAA
5 should be on or off. Is this a screenshot of that same process
6 but from this time period?

7 A. That's correct.

8 Q. And let's take a look at page 17.

9 Is this a screen -- well, you tell the jury. I won't lead
10 you. Why don't you tell the jury what this screenshot is.

11 A. This is a screenshot of what was that "Learn more" pop-up
12 that we saw, just like in the video that I created that we saw
13 earlier today.

14 Q. Okay. We can take down.

15 Now, Mr. Monsees, as part of your job, do you also, from
16 time to time, need to determine whether particular users have
17 WAA or sWAA turned on or off?

18 A. Yes, I do.

19 Q. And did you at any time have reason to find out what the
20 plaintiffs in this case, what their WAA and sWAA settings were
21 over time?

22 A. Yes, I did.

23 Q. How do you know -- or do you know what they were?

24 A. So, yes. I know, as product manager for Footprints, both
25 WAA and sWAA are settings that are stored and managed by

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1 Footprints, and so that means that our system has the full
2 history of that setting, whether it was on or off, the exact
3 timestamps for each Google Account.

4 **Q.** Did you go ahead and pull from that system the plaintiffs'
5 WAA and sWAA settings over time?

6 **A.** Yes.

7 **Q.** And did you generate a document showing that?

8 **A.** Yes.

9 **Q.** I'd like to show you what's been marked for identification
10 as Exhibit 941.4.

11 **MR. SANTACANA:** Your Honor may not have the .R version
12 of this. I'll just hand that up.

13 **BY MR. SANTACANA:**

14 **Q.** I believe you do, but here's another copy for you.

15 Oh, well, and, actually, I guess we're on .R2 now, which I
16 don't have a printed copy of.

17 Mr. Monsees, what is Exhibit G941.R2?

18 **A.** This is a summary of when various accounts, that are owned
19 by the plaintiffs, when those accounts were created and when
20 they had WAA and sWAA either on or off. So, basically, each
21 time when those settings changed.

22 **MR. SANTACANA:** Your Honor, I move Exhibit G941.R2
23 into evidence.

24 **MR. CARMODY:** No objection.

25 **THE COURT:** All right. 941.R2 -- is that correct? --

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1 will be admitted.

2 (Trial Exhibit 941.R2 received in evidence.)

3 **BY MR. SANTACANA:**

4 **Q.** Mr. Monsees, could you please explain to the jury how this
5 document is organized?

6 **A.** Sure. This is a table. If we start on the left, the
7 first column is the name of the plaintiff.

8 Many people have many different email addresses. These
9 are the different Google email addresses, which, remember, we
10 have tools to turn into a Google Account ID. That's what's in
11 the second column there.

12 The third column is the date when that Google Account was
13 created. The timestamp that we see next to it is the timestamp
14 of the change of settings.

15 And then we see the states of the WAA and sWAA settings in
16 those last two columns. And so if you kind of go from the top
17 to the bottom within an account, you can track how the states
18 of these settings changed over time on specifically the dates
19 that are in that timestamped column.

20 **Q.** Okay. So just to use one example, Mr. Monsees, I'd like
21 to focus on the email address peteysakeo8@gmail.com. Do you
22 see that?

23 **A.** Yes, I do.

24 **Q.** All right. So just to use an example, the first row
25 there, the second column of timestamps represents what?

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1 A. That's the time that the setting was changed. So we can
2 see that the account was created, which would mean that when
3 the WAA setting was turned on, it was turned on at the same --
4 same day that the account was created.

5 Q. Okay. Let's use one more example, and then we'll move on
6 from this.

7 Let's look at page 4, I think it is. Yes, the Julian
8 Santiago entries. So let's look at juliantsant8@gmail.com, just
9 to use an example.

10 That last row there, could you just explain what it
11 represents?

12 A. Sure. That last row is showing that on -- what is
13 that? -- September 15th of 2020, this account paused, turned
14 off their sWAA setting. And we can see that in that bottom
15 right cell.

16 Q. And before that, was that setting on?

17 A. Yes. We can see that setting was on back to 20 --
18 December 21st of 2016, which is three rows above that.

19 Q. So how long had that setting been on before plaintiff
20 Santiago turned it off?

21 A. Almost four years.

22 Q. And just, you said you've been working on this case for
23 five years. Do you recall when this case was filed?

24 A. I do not. 2020.

25 Q. Do you know if it was before or after Mr. Santiago paused

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1 his WAA setting?

2 A. I think it was before.

3 Q. All right. So we can take that down.

4 Have you heard of Screenwise, Mr. Monsees?

5 A. Yes, I have.

6 Q. What is it?

7 A. Screenwise is a program in Google. If you've ever heard
8 of Nielsen ratings for TV shows, it's kind of like Google's
9 version of that.

10 And for Screenwise, Google will pay users who sign up for
11 it to allow Google to monitor all of their Web traffic. It's
12 basically used so that Google can get a sense of how a sample
13 of American users are -- what they're doing on the Internet,
14 both with Google products and non-Google products.

15 Q. I'd like to show you some documents that relate to this.
16 Let's take a look at the document marked for identification as
17 Exhibit 578.

18 Do you recognize this document?

19 A. Oh, yes, I do.

20 Q. What is it?

21 A. This is the privacy policy for users of Google Panels,
22 which, I think, is the external name for Screenwise.

23 Q. Okay. And you're familiar with the Screenwise privacy
24 policy?

25 A. Yes, I am.

1 **MR. SANTACANA:** I move Exhibit 578 into evidence,
2 Your Honor.

3 **MR. CARMODY:** We object, Your Honor. Foundation. May
4 I take the witness on voir dire?

5 **THE COURT:** Well, no. You've made your foundation
6 objection.

7 You should provide a little more foundation about this
8 particular Panel privacy policy, and then I'll rule on it.

9 **MR. SANTACANA:** Of course, Your Honor.

10 **MR. CARMODY:** What it is, Your Honor, it's firsthand
11 knowledge, it's personal knowledge.

12 **THE COURT:** Yes, I get that.

13 Go ahead.

14 **BY MR. SANTACANA:**

15 **Q.** Mr. Monsees, you have -- you've worked in relation to
16 Screenwise over time in your job?

17 **A.** I have worked with the Screenwise Team for probably more
18 than six years.

19 **Q.** And you're familiar with how, in general, the Screenwise
20 system works?

21 **A.** Yes, I am. They work with Footprints, which I'm the
22 product manager for, to manage some of their data and some of
23 the UIs that they give to their panelists.

24 **Q.** In fairness, would you say you're an expert on Screenwise?

25 **A.** I wouldn't say I'm an expert.

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1 **Q.** And you have personal experience with this privacy policy?

2 **A.** I do. I believe many years ago we discussed this with the
3 Screenwise Team when they first began working with Footprints.

4 **Q.** Is this the privacy policy that was in effect in October
5 of 2017 for Screenwise?

6 **A.** Yes, it is.

7 **MR. SANTACANA:** Your Honor, I move it into evidence.

8 **MR. CARMODY:** No objection.

9 **THE COURT:** All right. 578 will be admitted.

10 (Trial Exhibit 578 received in evidence.)

11 **MR. SANTACANA:** Okay. Let's take that down.

12 **BY MR. SANTACANA:**

13 **Q.** I'd like to show you what's been marked for identification
14 as Exhibit 581.

15 Mr. Monsees, what is this document?

16 **A.** This is just an updated version of the Screenwise privacy
17 policy that we were just discussing.

18 **Q.** When was this in effect?

19 **A.** This is from June of 2021.

20 **MR. SANTACANA:** Your Honor, I move 581 into evidence.

21 **MR. CARMODY:** No objection.

22 **THE COURT:** 581 will be admitted.

23 (Trial Exhibit 581 received in evidence.)

24 **BY MR. SANTACANA:**

25 **Q.** Now I'd like to show you what's been marked for

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1 identification as Exhibit 576.

2 And what is this document?

3 **A.** This is another version of the Screenwise -- sorry. This
4 is the terms and conditions for Screenwise/Google Panels from
5 March of 2018.

6 **MR. SANTACANA:** I move Exhibit 576 into evidence.

7 **MR. CARMODY:** No objection, Your Honor.

8 **THE COURT:** 576 will be admitted.

9 (Trial Exhibit 576 received in evidence.)

10 **BY MR. SANTACANA:**

11 **Q.** I'd like to show you what's been marked for identification
12 as Exhibit 937. Last one. I know it's a little dry.

13 Mr. Monsees, could you tell us what this document is?

14 **A.** Yes. This is a summary, a table, capturing the different
15 disclosures for the Screenwise Panel program.

16 **Q.** Can you just explain a little bit more what you mean by a
17 summary of different disclosures?

18 **A.** So this is taking kind of key terms from the Screenwise
19 Panel that I think their panelists see, and it's providing the
20 disclosures, the exact excerpts from the privacy policy about
21 these topics.

22 **MR. SANTACANA:** Your Honor, I move Exhibit 937 into
23 evidence as a summary.

24 **MR. CARMODY:** It's an improper 1006.

25 **THE COURT:** And it's an improper summary because?

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1 **MR. CARMODY:** Can we approach, Your Honor?

2 **THE COURT:** Well, I'd like to see if we can speed it
3 up a little bit. Can you just tell me what the basis of the
4 objection is?

5 **MR. CARMODY:** Yeah. It's misleading. It doesn't
6 include a lot of stuff.

7 **THE COURT:** Okay. Did you put this together,
8 Mr. Monsees?

9 **THE WITNESS:** No, I did not.

10 **THE COURT:** All right. I'll sustain the objection at
11 this point.

12 **BY MR. SANTACANA:**

13 **Q.** Okay. Mr. Monsees, during our time here today, we have
14 gone through a number of Google's disclosures, and I'd like to
15 go back to the very first one that we discussed, which is the
16 privacy policy, if that's all right.

17 **A.** Sure.

18 **Q.** You recall the last thing that the plaintiff lawyer told
19 you is that he would like you to point out to the jury where
20 Google explains to users that it will collect their
21 de-identified data. Do you recall that?

22 **A.** I do.

23 **Q.** All right. Let's take a look at Exhibit 62.

24 And just to remind the jury, are users required to read
25 the privacy policy in order to create a Google Account?

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1 A. No, they are not.

2 Q. Are they required to agree to it in order to create a
3 Google Account?

4 A. Yes, they must.

5 Q. Are they given an opportunity to read the privacy policy?

6 A. Yes, they are.

7 Q. Your job includes describing things to users. Based on
8 what you know from your work at Google, do users sometimes read
9 the privacy policy?

10 A. Yes, they do.

11 Q. Is it very rare? How would you describe it?

12 A. We provide links to the privacy policy. I think within
13 every Google product we provide links from activity controls,
14 like we mentioned. I'm not sure exactly how many users read
15 it, but it's not a bad privacy policy.

16 Q. All right. Now, do you -- I think you said the answer is
17 a privacy policy. Are you saying the privacy policy explains
18 to users that data will be collected?

19 A. Yes.

20 Q. Where?

21 A. In a couple of places, but I think if we just --

22 Q. Let's start with one.

23 A. Well, I think if we just start at the top -- right? --
24 that text right there below the heading, it says [as read]:

25 "This Privacy Policy is meant to help you

1 understand what information we collect" -- "we"
2 meaning Google -- "why we collect it, and how you can
3 update, manage, export, and delete your information."

4 So I think we're pretty clear about that's what we're
5 talking about, not only for consumers like myself that use
6 Google services, but also businesses that use Google services.
7 It's all explained here in the privacy policy.

8 **Q.** Does the privacy policy explain, somewhere near the top,
9 what sort of activity data -- because we're talking about
10 Web & App Activity -- what sort of activity data will be
11 collected?

12 **A.** Yes. If we scroll down a bit, there's a section where we
13 describe very specifically the types of activity.

14 **Q.** Okay. And I believe this is -- this was shown to you
15 yesterday.

16 **A.** That's correct.

17 **Q.** All right. So go ahead and read that.

18 **A JUROR:** Your Honor, we have -- we don't have this
19 visible on these screens.

20 **THE COURT:** Oh, it was admitted because it's
21 Exhibit -- this is 62; right?

22 **MR. SANTACANA:** Yes, previously admitted.

23 **THE COURT:** It was admitted yesterday, I think.

24 (Discussion held off the record.)

25 **MR. SANTACANA:** Here, I can turn this around for you.

1 That's probably a little far, but we'll blow it up as much as
2 we can.

3 **THE COURTROOM DEPUTY:** They can probably look at that
4 monitor over there. So four of those monitors are out.

5 **THE COURT:** I'd like to say this never happens, but
6 that wouldn't be the truth.

7 We'll have our IT people come up and work on it, but one
8 possibility is if the jurors that are off on the end want to
9 move in, maybe you could sit together for a little while until
10 we can fix the other monitors. It's up to you. If you think
11 that's good enough, that's fine as well.

12 **MR. SANTACANA:** Okay.

13 **THE COURT:** Okay. Go ahead.

14 **MR. SANTACANA:** Okay. All ready? Great.

15 **BY MR. SANTACANA:**

16 **Q.** All right. So we were looking at the "Your activity"
17 section. Could you just please read to the jury where Google
18 discloses that it will collect activity data?

19 **A.** Sure. So right at the top, it says [as read]:

20 "We collect information about your activity in
21 our services, which we use to do things like
22 recommend a YouTube video you might like. The
23 activity information we collect may include..."

24 And then it gives many of the examples that we've
25 discussed today, like your search history or your watch

1 history.

2 Further down it also says "Activity on third-party sites
3 and apps that use our services," which I believe we looked at
4 yesterday.

5 Q. And then does that include activity data from
6 Google Analytics?

7 A. Yes, it does.

8 Q. Okay. Is this the only thing the privacy policy explains
9 about activity data collection from Google Analytics?

10 A. No. I think if we scroll down, there is another section,
11 a heading specifically about third-party sites and apps.

12 Q. Before we scroll down, why doesn't Google insert, right
13 here near the top, "This is going to include Google Analytics
14 data even when WAA is off, even if it's de-identified"? Why
15 doesn't it say that?

16 A. Well, I believe the section here is just really explaining
17 to users generally the types of activity that gets collected
18 when you're using a great variety of Google products, all those
19 different bullets above. So it's really just trying to explain
20 the overview for users at this point.

21 Q. So what if they want to understand better what you mean by
22 this "Your activity" section?

23 A. Well, the great thing is, as we scroll down this policy,
24 there are detailed sections that will talk about the types of
25 activity and tools you can use that are saved in your

1 Google Account, like the activity controls page that we've been
2 talking about. And then I mentioned, I think, there's another
3 section specific to third-party sites and apps that use
4 services.

5 So there's kind of detail areas as well as eventually,
6 I think, a glossary of key terms.

7 **Q.** Let's start with the detail area you just referred to
8 called "Your activity on other sites and apps."

9 22, please.

10 Okay. Is this the more detail on "Your activity on other
11 sites and apps" section you were referring to?

12 **A.** Yes. This is the one I was thinking of.

13 **Q.** All right. If you wouldn't mind, we'll go through this
14 briefly, but we need to break it down. It's a lot of words.

15 So let's start with the first sentence. What does it say?

16 **A.** Sure.

17 [As read]:

18 "This activity might come from your use of
19 Google services, like from syncing your account with
20 Chrome or your visits to sites and apps that partner
21 with Google."

22 **Q.** Go ahead and keep going. That seems pretty clear to me.

23 **A.** [As read]:

24 "Many websites and apps partner with Google to
25 improve their content and services. For example, a

1 website might use our advertising services (like
2 AdSense)" -- those are the Google served ads you see
3 on other websites -- "or analytics tools (like
4 Google Analytics)" -- we're talking about here -- "or
5 it might embed other content (such as videos from
6 YouTube)."

7 **Q.** Has Google disclosed that it collects activity data from
8 other sites and apps, like analytics tools, from 2016 to 2024
9 in its privacy policy?

10 **A.** Yes, it has.

11 **Q.** To be fair, it's possible that people like the plaintiffs
12 didn't read this paragraph. You'd agree; right?

13 **A.** Yes.

14 **Q.** But they are all given the opportunity and required to
15 agree to it?

16 **A.** Yes, they are, to create an account.

17 **Q.** Let's keep reading.

18 **A.** It then goes on to say [as read]:

19 "These services may share information about your
20 activity with Google and, depending on your account
21 settings and the products in use (for example, when a
22 partner uses Google Analytics in conjunction with our
23 advertising services), this data may be associated
24 with your personal information."

25 **Q.** All right. So let's -- I want to focus on the part of

1 this that came before the word "and" in that last sentence
2 [as read]:

3 "These services may share information about your
4 activity with Google," then it says, "and, depending
5 on your account settings, this data may be associated
6 with your personal information."

7 Did I read that right?

8 **A.** That's correct.

9 **Q.** What account settings -- that looks like a link. Is that
10 a link?

11 **A.** That is a link. I believe that link takes you to another
12 part of the privacy policy that then explains things like
13 activity controls.

14 **Q.** So right here in the privacy policy, Google says there's a
15 thing called Google Analytics that sends data and, depending on
16 your account settings, which includes WAA, this may be
17 associated with your personal information?

18 **A.** May be. That's correct.

19 **Q.** So why does it say "may be"?

20 **A.** Because this sentence is saying these settings may share
21 information about your activity to Google and, when -- let's
22 just pick on this one specifically -- when sWAA is on, these
23 may be associated with your personal information, meaning your
24 Google Account.

25 **Q.** So just to be perfectly clear, is there a part of this

1 privacy policy that contradicts what this says and instead
2 says: That account setting doesn't just control whether it's
3 associated with personal information; it actually controls
4 de-identified information also?

5 **A.** No, not that I'm aware of.

6 **Q.** Has there ever been a statement like that in Google's
7 privacy policy since 2016?

8 **A.** Not that I can think of.

9 **Q.** As far as you know, has there ever been a statement like
10 that from Google anywhere since it was founded?

11 **A.** No. I don't believe we've ever made statements about
12 controls for that de-identified data.

13 **Q.** Now, the last two words in this paragraph say "personal
14 information." Is that a term that people use inside of Google?

15 **A.** Yes.

16 **Q.** Does it have a specialized meaning?

17 **A.** Yes. I had mentioned before that I think there is a
18 glossary of key terms that's included in the privacy policy
19 that explains this.

20 **Q.** Okay. So that specialized meaning is actually provided to
21 users in the privacy policy?

22 **A.** Yes, it is.

23 **Q.** Let's go to page 26.

24 Where is -- why don't you read that definition of
25 "personal information."

1 **A.** Sure. So we're looking at a list of key terms that often,
2 in the privacy policy, you can tap and, like, a little bubble
3 pops up and defines them. And here, for personal information,
4 it says [as read]:

5 "This is information that you provide to us
6 which personally identifies you, such as your name,
7 email address, or billing information, or other data
8 that can be reasonably linked to such information by
9 Google, such as information we associate with your
10 Google Account."

11 **Q.** Can you just explain, in your own words, your
12 understanding of what you were trying to say in this privacy
13 policy when you defined this term "personal information"?

14 **A.** This is basically saying that this is information that is
15 going to be tied with one of those GAIA IDs that we talked
16 about, which links to your Google Account profile, like your
17 email address and your name.

18 **Q.** Does Google -- you know this case is about the difference
19 between on and off. Does Google define non-personal
20 information in the privacy policy in case somebody, after
21 reading all this, is still confused?

22 **A.** Yes, it does. I believe it's right above, in the same key
23 term section.

24 **Q.** Okay. It's defined right before it. Let's take a look.
25 Go ahead and read that.

1 **A.** So this is non-personally identifiable information.

2 [As read]:

3 "This is information that is recorded about a
4 user so that it no longer reflects or references an
5 individually identifiable user."

6 This is basically the de-identified information or the
7 pseudonymous information that we've been talking about today.

8 **Q.** Does Google provide any controls that you are aware of in
9 this activity controls page that give users the ability and
10 power to prevent Google from collecting non-personally
11 identifiable information?

12 **A.** No.

13 **Q.** Let's go back up to where we were before in the privacy
14 policy, this section called "Your activity on other sites and
15 apps."

16 So we saw that reference to account settings controlling
17 what may be associated with your personal information. Right
18 below that it says [as read]:

19 "Learn more about how Google uses data when you
20 use our partners' sites or apps."

21 So what happens if you click that link?

22 **A.** I believe that jumps you down to that other section of --
23 oh, sorry.

24 That actually jumps you to a different section, I think,
25 of the policy site, where we have a detailed article just about

1 our third-party technologies.

2 **Q.** So if somebody is still confused, they can click that and
3 learn more?

4 **A.** Correct.

5 **Q.** I'd like to show you what's been marked for identification
6 as Exhibit 123.

7 What is this exhibit?

8 **A.** This is that technologies article that I mentioned that
9 explains, for users looking for more info, how Google uses
10 information from sites or apps that use our services.

11 **MR. SANTACANA:** Your Honor, I move Exhibit 123 into
12 evidence.

13 **MR. CARMODY:** No objection.

14 **THE COURT:** 123 will be admitted.

15 (Trial Exhibit 123 received in evidence.)

16 **BY MR. SANTACANA:**

17 **Q.** So, Mr. Monsees, this is what Google shows users if they
18 want to learn more about Google activity data on other sites
19 and apps?

20 **A.** That's correct.

21 **Q.** Could you just read the top of it for us, orient us?

22 **A.** Sure. It says here [as read]:

23 "Many websites and apps use Google services to
24 improve their content and keep it free. When they
25 integrate our services, these sites and apps share

1 information with Google."

2 Q. Okay. So here, again, Google is saying sites and apps do
3 send Google data?

4 A. Correct.

5 Q. Let's look at the next paragraph.

6 A. So we give an example here. We say [as read]:

7 "For example, when you visit a website that uses
8 advertising services, like AdSense, including
9 analytics tools, like Google Analytics, or embeds
10 video content from YouTube, your web browser
11 automatically sends certain information to Google."

12 Q. Can you read the next sentence?

13 A. Sure.

14 [As read]:

15 "This includes the URL of the page you're
16 visiting and your IP address."

17 Q. How about the last sentence for me, please?

18 A. [As read]:

19 "Apps that use Google advertising services also
20 share information with Google, such as the name of
21 the app and a unique identifier for advertising."

22 Q. What does that last term, "unique identifier for
23 advertising," mean?

24 A. This is another type of de-identified or pseudonymous ID.
25 I think it depends on the type of ad service being provided.

1 Sometimes it is an ID provided by your mobile device, like
2 your iPhone. Sometimes it's an ID based on a cookie but also
3 de-identified, not tied to your account.

4 **Q.** Are people at Google permitted to figure out who -- whose
5 device is generating the unique identifier you just discussed?

6 **A.** No. I think that would violate multiple policies.

7 **Q.** Would it violate any of the policies we saw earlier today?

8 **A.** Yes. I think that UDAP policy -- or sorry -- the user
9 data access policy that we looked at, it would violate that.

10 It could lead up to getting fired if you did.

11 **Q.** Okay. Let's look at the next paragraph.

12 What if a user is wondering what you're going to use this
13 data for and what you're not going to use it for when you
14 collect it? What does Google say to users about that?

15 **A.** So we describe that right here. It says [as read]:

16 "Google uses the information shared by sites and
17 apps to deliver our services, maintain and improve
18 them, develop new services, measure the effectiveness
19 of advertising, protect against fraud and abuse, and
20 personalize content and ads you see on Google and on
21 our partners' sites and apps."

22 **Q.** What is an example of measuring the effectiveness of
23 advertising that's being disclosed to users here?

24 **A.** I think the best example is when Google shows a display ad
25 through AdSense, say on a newspaper's website that you're

1 looking at, we need to measure when those ads are clicked. So
2 that allows Google to know which advertisers to charge, which
3 publishers to pay, and it tells our systems that an ad might be
4 good or bad. If an ad never gets clicked, it's not going to
5 show up as often when Google serves it because it doesn't seem
6 to be a good ad.

7 **Q.** Is that log of a transaction, like a click on an ad, is
8 that saved in a user's Google Account?

9 **A.** No. That information has to be processed independently,
10 and I believe we have obligations to store that data for
11 financial reporting.

12 **Q.** Okay. Now, I want to look at the second page, third
13 bullet in that list of bullets there.

14 The next bullet, please.

15 Can you read that for us?

16 **A.** Sure. It says [as read]:

17 "Many websites and apps use Google Analytics to
18 understand how visitors engage with our sites and/or
19 apps. If you don't want analytics to be used in your
20 browser, you can install the Google Analytics browser
21 add-on."

22 And then there's a "Learn more" link here to the
23 Google Analytics page.

24 **Q.** So at least with respect to web browsers, Google has a
25 product people can use to prevent analytics from being

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1 collected?

2 **A.** Yes. There's an extension that you can install.

3 **Q.** Does this page or any other privacy policy say that WAA is
4 the way to prevent analytics data from being collected?

5 **A.** No, it does not.

6 **Q.** It's a different product entirely?

7 **A.** Yes. The browser extension, doesn't matter if you're
8 signed in, signed out, WAA on, it's a totally separate thing.

9 **Q.** Okay. We can put that away.

10 Mr. Monsees, I have no further questions.

11 **A.** Thank you.

12 **THE COURT:** Mr. Carmody?

13 **REDIRECT EXAMINATION**

14 **BY MR. CARMODY:**

15 **Q.** Sir, are the documents that you just went over with
16 counsel this morning the best documents that Google has to
17 support its claim that users somehow should have known Google
18 was collecting and profiting from their SWAA data even when
19 their SWAA controls were turned off?

20 **A.** Yes. I think from my personal opinion, these would be the
21 documents that I would think of.

22 **MR. CARMODY:** Thank you, sir.

23 **THE COURT:** Anything further?

24 **MR. SANTACANA:** No questions, Your Honor.

25 **THE COURT:** You may step down.

PROCEEDINGS

1 **THE WITNESS:** Thank you.

2 Do I leave the binders or --

3 **THE COURT:** Yeah, we'll take care of the binders.

4 **THE WITNESS:** Okay. Thank you.

5 (Witness excused.)

6 **THE COURT:** Whoever's binders these all are, please
7 retrieve them and we'll -- before the next witness.

8 All right. The next plaintiffs' witness.

9 **MR. LEE:** The next witness is Julian Santiago.

10 **THE COURT:** All right. Please come to the stand to be
11 sworn.

12 (Julian Santiago steps forward to be sworn.)

13 **JULIAN SANTIAGO,**
14 called as a witness for the Plaintiffs, having been duly sworn,
15 testified as follows:

16 **THE WITNESS:** I do.

17 **THE COURTROOM DEPUTY:** Thank you. Make sure you don't
18 roll off the stairs there in that chair.

19 **THE WITNESS:** I'll try not to.

20 **THE COURTROOM DEPUTY:** Could you make sure you speak
21 clearly into the microphone for the court reporter?

22 **THE WITNESS:** Yes.

23 **THE COURTROOM DEPUTY:** Could you please state your
24 full name for the record and spell your last name.

25 **THE WITNESS:** Julian Santiago, S-a-n-t-i-a-g-o.

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1 **THE COURTROOM DEPUTY:** Thank you.

2 **THE WITNESS:** Can you hear me there good?

3 **THE COURT:** Yes.

4 **THE WITNESS:** Thank you.

5 **THE COURT:** You may proceed.

6 **DIRECT EXAMINATION**

7 **BY MR. LEE:**

8 **Q.** Mr. Santiago, I guess it's almost afternoon.

9 Would you please introduce yourself to the jury?

10 **A.** My name is Julian Santiago.

11 **Q.** And, Mr. Santiago, what do you do for a living?

12 **A.** I'm an operations manager at a produce company in Miami,
13 Florida. I oversee the import and distribution of fruits and
14 vegetables to some of the major retailers here in the
15 United States.

16 **Q.** Organic vegetables?

17 **A.** Some, yeah.

18 **Q.** How long have you been doing that?

19 **A.** I've been doing that about four years.

20 **Q.** Did you attend college?

21 **A.** Yes.

22 **Q.** Where did you go to school?

23 **A.** I went to Florida State University.

24 **Q.** What did you study there?

25 **A.** I studied business.

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1 Q. And do you have family, kids?

2 A. I do have a family. I'm married. No kids yet.

3 Q. And do you understand that you're serving as a class
4 representative in this case?

5 A. Yes.

6 Q. And what do you understand that to mean?

7 A. I understand that this is a class action and there are
8 millions of people whose rights are at issue with this case,
9 and I understand that all those people cannot be here right
10 now. So, therefore, I'm here to represent them, and I will do
11 that to the best of my ability.

12 Q. And as a class representative, have you been involved in
13 this case for several years now?

14 A. Yes.

15 Q. Did you let Google take your deposition in this case?

16 A. Yes.

17 Q. And have you tried to keep up-to-date on the case?

18 A. I've done my best.

19 Q. Did you take a lot of calls from your lawyers, including
20 myself?

21 A. Yes. You guys call a lot.

22 Q. Sorry about that.

23 How long have you participated in this lawsuit?

24 A. It's five years now.

25 Q. And have you been paid any money to be a class

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1 representative?

2 A. No.

3 Q. Why did you decide to join this lawsuit and become a class
4 representative?

5 A. Well, I think this matter is important, not just for me
6 but for our society as a whole. I think -- I take my privacy
7 very seriously, and we need to demand that big tech companies,
8 like Google, be honest with their users; and if Google promised
9 us something, that they would not collect our data with WAA
10 turned off and they still collected that, I don't think that's
11 right.

12 Q. Do you have a Gmail account, Mr. Santiago?

13 A. Yes.

14 Q. Do you recall how long you've had that account?

15 A. I opened that in 2016, so almost ten years.

16 Q. And what kind of cell phones have you had, smartphones,
17 since 2016?

18 A. I've had Apple iPhones.

19 Q. And were there apps on your Apple iPhones? I know
20 that's a dumb question, but --

21 A. Yes --

22 Q. -- I've got to ask.

23 A. -- of course.

24 Q. Okay. Once you became a class representative in this
25 case, do you remember Google providing a list of non-Google

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1 apps, third-party apps, that have a software development kit
2 which enables Google to take your data from those apps?

3 **A.** Yes, I do remember.

4 **Q.** And do you remember identifying from that list which on
5 that -- which of the apps on that list that you had on your
6 phone during the class period?

7 **A.** Yes.

8 **Q.** All right. Let's take a look at a demonstrative slide.

9 (Pause in proceedings.)

10 **MR. LEE:** I've got it now.

11 **BY MR. LEE:**

12 **Q.** Mr. Santiago, what is this slide?

13 **A.** Well, these are my third-party apps that had -- that I had
14 on my phone that Google told us had their Google SDKs on it.
15 As it turns out, it was a majority of the apps on my phone, and
16 basically we found out that Google was collecting my data
17 across all of these apps even when I had WAA turned off.

18 **Q.** All right. Let's look at some of the apps identified
19 here. I'll just list a few. Cash App, Discord, eBay,
20 Facebook, Map My Ride, Twitter, Venmo.

21 Is it now your understanding that Google was taking your
22 data from each of these apps even when you had WAA off?

23 **A.** It is now, yes.

24 **Q.** Before you joined the lawsuit, did you know that Google
25 was taking your data from these apps even with WAA off?

1 **A.** No.

2 **Q.** Are you aware of any place where Google publicly tells
3 people which apps have Google SDKs that take this data?

4 **A.** No.

5 **Q.** How did you learn that Google was taking your data through
6 these apps?

7 **A.** Well, it wasn't until after we filed this lawsuit that
8 Google -- we asked Google to provide that information. I told
9 Google what apps I use, and Google told us which of those apps
10 had the Google SDKs.

11 And then at that point, our expert was able to do his work
12 and confirm that Google was, indeed, collecting data across all
13 these apps even with WAA turned off.

14 **Q.** Collecting your data?

15 **A.** Yes, from the apps.

16 **Q.** Now, do you want someone knowing everything you're
17 browsing on your apps at all times?

18 **A.** No, absolutely not.

19 **Q.** Why not?

20 **A.** Well, it's invasive. You know, you don't -- I don't want
21 Google knowing what I'm doing across every app, what I'm
22 shopping for, what I'm reading online. It's a lot, it's
23 everything, and it's uncomfortable.

24 **Q.** Do you know what Google is doing with that information?

25 **A.** No. We have no idea.

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1 Q. Do you know what Google will do with that information?

2 A. No.

3 Q. Mr. Santiago, is your iPhone password protected?

4 A. Yes.

5 Q. All right. These apps that were on your phone that we
6 talked about, do you use them regularly?

7 A. Yeah. I use a handful of them every day and a few of them
8 a couple times a week. It varies.

9 Q. Which ones would you say that you use regularly?

10 A. Well, I use the Calm app, Duolingo, Map My Ride, some of
11 the sports ones, Target, a few of them -- you know, Weather
12 Channel. Being in South Florida, we have hurricanes, so that's
13 a common one.

14 Q. And your regular use of these apps, does that go all the
15 way back to 2016?

16 A. Yes.

17 Q. Since 2016 to now, have you owned multiple smartphones and
18 tablets?

19 A. Yeah, I'd say so.

20 Q. Okay. And in that time period, did you ever own a
21 smartphone or tablet that you purchased, used for just one
22 month, and then never used again for one reason or another?

23 A. No. That wouldn't make much sense. I -- you know, these
24 devices are expensive. You try to get the most use out of them
25 you can.

1 Q. Did you use all your smartphones or tablets that you've
2 owned since 2016 at least -- at least on a monthly basis?

3 A. Yeah. I'd use them on a daily basis.

4 Q. And do you understand that the relevant time period in
5 this case is the 98 months between July 2016 and
6 September 2024?

7 A. Yes, I understand that.

8 Q. Okay. And during that 98-month period, which -- what is
9 your best estimate, in terms of the number of months, that you
10 use one or more of these apps that are listed here?

11 A. I'd say I used them every one of those months.

12 Q. Let's talk about how you manage your privacy settings to
13 control Google's collection of your app activity. Okay?

14 A. Okay.

15 Q. Have you heard of the privacy control called Web & App
16 Activity or WAA?

17 A. Yes.

18 Q. We've talked a lot about it here.

19 A. I've seen it quite a bit here.

20 Q. Okay. Who called the WAA button a privacy control?

21 A. That's what Google called it.

22 Q. And did you ever turn the WAA button off?

23 A. Yes.

24 Q. When did you first remember turning the WAA button off?

25 A. I remember in September of 2020, which we also saw

1 earlier.

2 Q. Okay. And we'll get more to it in a bit, but I just want
3 to be very clear up-front. Did you turn the WAA button off
4 before or after you joined this lawsuit?

5 A. After.

6 Q. No. Did you turn the WAA button off before or after you
7 joined this lawsuit?

8 A. Beforehand.

9 Q. Thank you. You scared me.

10 Now, when you turned the WAA button off, did you expect
11 Google would continue to collect and save your app browsing
12 activity?

13 A. No.

14 Q. All right. Before you turned the WAA button off, did you
15 review Google's privacy policy?

16 A. Yes.

17 Q. Is there a particular reason you reviewed Google's privacy
18 policy?

19 A. Well, Google's a very large company. I wanted to have an
20 understanding of what Google would be collecting and what my
21 rights were in terms of privacy.

22 Q. Now, I'm showing you what's been premarked as Plaintiffs'
23 Exhibit PX67.

24 Mr. Santiago, do you recognize this document?

25 A. Yes.

1 Q. What is it?

2 A. This is Google's privacy policy from July 1st, 2020.

3 Q. And did you read this privacy policy prior to joining the
4 lawsuit?

5 A. Yes.

6 Q. Can you read the effective date towards the top of this
7 document?

8 A. July 1st, 2020.

9 MR. LEE: Your Honor, may I move per PX67 into
10 evidence?

11 MR. ATTANASIO: No objection.

12 THE COURT: 67 will be admitted.

13 (Trial Exhibit PX67 received in evidence.)

14 BY MR. LEE:

15 Q. All right. So let's get oriented because the jury is just
16 seeing this now.

17 What's been blown up here, where does this actually show
18 up on the privacy policy?

19 A. This is from right up at the top -- tippy top of the
20 privacy policy.

21 Q. Would you like a binder, by the way, in case --

22 A. Sure.

23 Q. -- the monitor doesn't work?

24 A. Sure.

25 Q. Okay. Hold on one second.

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1 **MR. LEE:** May I approach, Your Honor?

2 **THE COURT:** Sure.

3 **THE WITNESS:** Thank you.

4 **BY MR. LEE:**

5 **Q.** No problem.

6 Do you got water?

7 **A.** Yes. Thanks.

8 **Q.** Let's start with basics. What do you understand the word
9 "privacy policy" to mean?

10 **A.** Well, pretty self-explanatory. Google's policy on
11 privacy, what Google would promise to do in terms of our
12 privacy.

13 **Q.** Do you see at the top of the privacy policy on the first
14 page there's a -- the first few sentences are in big bold
15 letters?

16 **A.** Yes.

17 **Q.** Could you read the big bold letters to the jury, please?

18 **A.** Sure.

19 [As read]:

20 "When you use our services, you're trusting us
21 with your information. We understand this is a big
22 responsibility and work hard to protect your
23 information and put you in control."

24 **Q.** All right. And let's go down two paragraphs on the same
25 page of the privacy policy, and do you see the last sentence

1 that begins with "Across our services"?

2 A. Yes.

3 Q. Could you read that to the jury?

4 A. [As read]:

5 "And across our services, you can adjust your
6 privacy settings to control what we collect and how
7 your information is used."

8 Q. What is your understanding of what Google means when it
9 says, "you can control what we collect"?

10 A. Well, they're putting us in control of what they will be
11 collecting.

12 Q. And what's your understanding of what Google means here
13 when it says, "You can control how your information is used"?

14 A. Again, the user is in control of what information is used
15 and how that information is used.

16 Q. Okay. And I think we covered it, but let's be sure.

17 As you understand this first page that we read in Google's
18 privacy policy, who's in control of what information Google is
19 allowed to collect and what Google is allowed to use?

20 A. I am.

21 Q. Do you recall whether Google's privacy policy, explaining
22 that you have privacy controls that allow you to control what
23 information Google can take, copy, or use?

24 A. Sorry. Can you repeat it?

25 Q. Sure.

1 Do you recall whether Google's privacy policy offered
2 something called privacy controls that allowed you to control
3 the information that Google could take, copy, or use?

4 **A.** Yes, I do.

5 **Q.** All right. Let's take a look on the very next page of the
6 privacy policy.

7 Do you see in that last sentence that begins with "The
8 information Google collects"?

9 **A.** Yes.

10 **Q.** Could you read that to the jury, please.

11 **A.** [As read]:

12 "The information Google collects and how that
13 information is used depends on how you use our
14 services and how you manage your privacy controls."

15 **Q.** And so they're saying here that you can manage the
16 information that Google collects through something called
17 privacy controls. Do you see that?

18 **A.** Yes.

19 **Q.** Is there a section in the privacy policy that actually
20 lays out privacy -- the privacy controls?

21 **A.** Yes.

22 **Q.** All right. Let's look at that. That's on page 8.

23 And is this the section in the privacy policy that
24 specifically talks about privacy controls?

25 **A.** Yes, privacy controls.

1 Q. All right. There's a little blue link there that says,
2 "Go to activity controls." Do you see that?

3 A. Yes, I do.

4 Q. Did you click that back when you read the privacy policy?

5 A. Yes.

6 Q. And what happens if you click that blue link?

7 A. The "Go to activity controls" link takes you to the WAA
8 page that we've been talking about.

9 Q. All right. Let's take a look at PX84, which is already in
10 evidence.

11 Are you familiar with this document?

12 A. Yes.

13 Q. Did you review what Google specifically says about WAA and
14 the subsetting sWAA in this document?

15 A. Yes, I did.

16 Q. And what's -- what was your understanding before this
17 lawsuit about what these buttons do when they're turned on?
18 Let's start with WAA.

19 A. Sure. So if it's on, pretty simple, what it says right
20 there. Google will save your activity on Google sites and
21 apps; and if sWAA is also on, that will include Chrome history
22 and activity from sites and apps at devices -- and devices that
23 use Google services. So if that is on, Google will collect
24 this; and if it is off, Google shouldn't collect this.

25 Q. How about sWAA?

1 A. Yes. SWAA -- sWAA as well.

2 Q. Okay. Did you -- do you see where it says "Learn more"
3 right at the top of the Web & App Activity section right there?

4 A. Web & App -- yes, "Learn more."

5 Q. And do you remember clicking that?

6 A. I do.

7 Q. All right.

8 MR. LEE: Before we move to another document,
9 Your Honor, I think I forgot to move in PX67.

10 MR. ATTANASIO: No objection.

11 THE COURT: 67 will be admitted. It was already
12 admitted.

13 MR. LEE: That's what I thought.

14 THE COURT: It's been admitted twice.

15 MR. LEE: Okay. Thank you.

16 BY MR. LEE:

17 Q. Let's take a look at what happens when you click the
18 "Learn more" button. Okay?

19 A. Okay.

20 Q. So I'm going to show you what's been premarked as PX116.

21 A. Okay.

22 Q. And do you see, sort of towards the bottom of the first
23 page, there's a section that says, "What's saved as Web & App
24 Activity"?

25 A. Yes, I do.

1 Q. Okay. Do you recall reading this document?

2 A. I do. I remember it.

3 Q. Did you do that before joining the lawsuit?

4 A. Before.

5 MR. LEE: May I move PX116 into evidence, Your Honor?

6 MR. ATTANASIO: No objection.

7 THE COURT: 116 will be admitted.

8 (Trial Exhibit PX116 received in evidence.)

9 BY MR. LEE:

10 Q. All right. Now let's take a look, I think it starts a
11 little on the next page, where -- beginning with "Info about
12 your browsing" --

13 A. Mm-hmm.

14 Q. -- and then some of those bullets below.

15 A. Okay.

16 Q. Based on this disclosure, what activity does Google say
17 that it saves when WAA is on?

18 A. If WAA is on, based on this, Google will be saving info
19 about your browsing and other activity on sites, apps, and
20 devices that use Google services, along with activity from
21 sites and apps that partner with Google to show ads, and
22 activity from sites and apps that use Google services,
23 including data that apps share with Google.

24 Q. Now, do you see below that where Google states [as read]:

25 "To let Google save this information, Web & App

1 Activity must be on"?

2 A. Yes.

3 Q. Do you see that?

4 A. I see that.

5 Q. Mr. Santiago, what is the opposite of on?

6 A. Off.

7 Q. So based on this disclosure, what understanding did you
8 have regarding what app activity Google is not allowed to save
9 when WAA is turned off?

10 A. Well, if WAA is turned off, Google should not be saving
11 activity from sites and apps that partner with Google to show
12 ads, and Google should not be saving activity from sites and
13 apps that use Google services, including data that apps share
14 with Google.

15 Q. Now, after you read the privacy policy and specifically
16 the privacy control that we're looking at here, WAA, what did
17 you do next?

18 A. After reading this, I turned WAA off.

19 Q. When you turned WAA off, did that subsetting that we
20 looked at, sWAA, also turn off?

21 A. Yes.

22 Q. All right. Where did you turn WAA off from?

23 A. From the activity controls page.

24 Q. All right. And do you recall when that was?

25 A. That was mid-September of 2020.

1 Q. Why do you remember turning it off in mid-September of
2 2020?

3 A. Well, a few reasons. I had just gotten a new laptop when
4 I started a new job, and like a lot of us do when we get a new
5 device, you know, I was setting up my personal preferences, and
6 that included some of the privacy stuff.

7 And a big one was that I had just recently seen the
8 documentary that had just come out on Netflix, *The Social*
9 *Dilemma*; and this documentary talked about how big tech
10 companies, like Google, were collecting endless amounts of
11 information on us and profiting greatly from that information,
12 and that was a big eye-opener for me. After seeing that
13 documentary, I began to take my privacy much, much more
14 seriously.

15 Q. And how much time after seeing *The Social Dilemma* in early
16 September 2020 did you review Google's privacy policy and WAA
17 disclosures and turn WAA off?

18 A. Pretty much immediately after.

19 Q. And when did you learn about this lawsuit?

20 A. In late September of 2020.

21 Q. Did you learn about this lawsuit -- I'll strike that.

22 How did you learn about this lawsuit?

23 A. Well, I was out to dinner with my girlfriend at the time,
24 my now wife, and her family and celebrating a birthday; and as
25 we often do at dinners and gatherings, we talk about shows,

1 movies we liked, and I brought up this documentary I had just
2 seen, *The Social Dilemma*, and how crazy it was, big eye-opener,
3 like I mentioned, and was telling them about it.

4 And my girlfriend's aunt at the time was working as a
5 secretary at a law firm, Boies Schiller Flexner, and she
6 mentioned that her firm was working on a case against Google
7 and some of this privacy stuff. I was intrigued right away and
8 asked her for contact information to reach out to the firm.

9 Q. And who reached out first? Did you reach out or did the
10 lawyers representing the plaintiffs reach out to you?

11 A. I did. I reached out.

12 Q. And when did you join the lawsuit?

13 A. In late September 2020.

14 Q. Did you watch the opening statement from Google's lawyer
15 in this case?

16 A. Yes, I did.

17 Q. And did you hear him say the plaintiffs turned off WAA for
18 the first time after joining the lawsuit?

19 A. Yes.

20 Q. Was that a true statement or an untrue statement?

21 A. That was untrue.

22 Q. I'd like to talk a little bit more about how you expected
23 WAA to work after you turned it off and continued to use apps
24 like, you know, Twitter, Spotify, and the things on that list.
25 Okay?

1 **A.** Okay.

2 **Q.** Now, when you turned off WAA, did you expect that Google
3 was going to collect and save your app activity when you used
4 those apps?

5 **A.** No, certainly not. When I turned off WAA, I expected
6 Google would not be saving or collecting any activity from my
7 apps.

8 **Q.** What about the apps themselves that you were using? Could
9 you still collect -- did you understand that they could still
10 collect information even when WAA was off?

11 **A.** Sure. It may be possible for the apps to collect certain
12 information from within the app if I had given the app
13 permission; but as far as Google's concerned, WAA turned off
14 means that they would not be collecting any information from
15 the apps.

16 **Q.** Did you ever see a disclosure from any app that said apps
17 share your data with Google even when WAA is off?

18 **A.** No.

19 **Q.** Did you ever see a disclosure from any app, any app on
20 your list, that said Google can save your data from the app
21 even when WAA is turned off?

22 **A.** No.

23 **Q.** At the time you turned WAA off, did you trust that Google
24 would honor the promises it made in its privacy policy and in
25 the WAA disclosures that we saw?

1 **A.** At the time, yes.

2 **Q.** And before joining this lawsuit, did you read or see
3 anything that would call into question the promises that Google
4 made about WAA?

5 **A.** Specifically about WAA, no.

6 **Q.** Now, the jury's heard that Google does collect, save, and
7 use people's app browsing data even when WAA is off. Do you
8 recall hearing that?

9 **A.** Yes.

10 **Q.** All right. Let's get the first page of the privacy policy
11 back up, PX67. And let's highlight what we read before.

12 [As read]:

13 "Across our services, you can adjust your
14 privacy settings to control what we collect and how
15 your information is used."

16 Do you see that?

17 **A.** Yes.

18 **Q.** Now, if Google collects and uses your app activity data
19 even when WAA is turned off, how are you in control of what
20 Google collects?

21 **A.** I'm not.

22 **Q.** So is this statement in the privacy policy, is it true or
23 is it false?

24 **A.** It's false.

25 **Q.** Let's go back to PX116.

1 And we looked at this before. Do you remember when it
2 laid out the activity, and it says, "To let Google save this
3 information, Web & App Activity must be on"?

4 **A.** Yes.

5 **Q.** All right. If Google saves your app activity data even
6 when WAA is turned off, then is the statement that "To let
7 Google save this information, Web & App Activity must be on,"
8 in your view, is that true or false?

9 **A.** It's false.

10 **Q.** Now that you know that Google was collecting, saving, and
11 using your app activity data this entire time, describe how
12 that's affected you.

13 **A.** Well, Google has a ton of information on us that they
14 never had our permission to have. We have no idea what they're
15 doing with it, what they will do with it. It's concerning.

16 **Q.** And do you feel that Google taking your information is
17 highly offensive?

18 **A.** Yeah. Yes.

19 **Q.** Explain why.

20 **A.** Misleading people is highly offensive. Taking people's
21 information without their permission, that's highly offensive.
22 Making a fake button that deceives people is highly offensive
23 as well.

24 **Q.** Now, after you joined the lawsuit because Google was
25 collecting your browsing activity even with WAA off, did you

1 stop using your apps?

2 **A.** No, I did not.

3 **Q.** Why not?

4 **A.** Well, a few reasons. Firstly, Google should have to
5 change. Google should make a privacy button that actually
6 works and honor its promises to its users.

7 And, secondly, as a class representative, it is my
8 responsibility to this class to maintain my same behaviors so
9 that our experts can do their work, and they've done a
10 phenomenal job at that, to be able to confirm what Google was,
11 indeed, collecting; and, finally, for legal reasons, to get
12 Google to change its practices.

13 **Q.** Did knowing that Google collected and saved your app
14 activity after the lawsuit, did it change how you used certain
15 apps?

16 **A.** I would say so, yeah.

17 **Q.** Tell me more about that.

18 **A.** Well, I was certainly more cautious with certain apps and
19 probably veered away from some altogether, maybe some of the
20 social media apps. So it definitely affected the number of
21 apps that I was using.

22 **Q.** Do you have an understanding, Mr. Santiago, one way or
23 another, that Google compromises the bandwidth or data on your
24 phone, as well as the battery life on the device, by taking
25 this sWAA data even when you have WAA off?

1 **A.** Yes, I'd imagine so.

2 **MR. ATTANASIO:** Objection. Foundation.

3 **THE COURT:** Overruled.

4 **BY MR. LEE:**

5 **Q.** What was your answer? I'm sorry.

6 **A.** I would imagine so.

7 **Q.** Do you think Google should be doing that?

8 **A.** No. Certainly not. Google shouldn't be doing anything
9 with our data. When we turned WAA off, we told them that they
10 did not have permission to do anything with that data. So if
11 they're also invading our phones and taking that data, there's
12 definitely additional bandwidth or energy usage going to that,
13 I'm sure, to send those -- that information back to Google. So
14 not only are they taking that data from us, they're also using
15 our resources to do so.

16 **Q.** Do you think the class should be reimbursed for the loss
17 of their bandwidth and battery life?

18 **A.** Yes, I would think so.

19 **Q.** Can you describe how Google's conduct has impacted you
20 emotionally?

21 **A.** It's been challenging knowing that we've been deceived and
22 there's nothing you could do to stop it after Google made you
23 feel that you had their trust -- or they had our trust and they
24 continued to collect our data even when they told us we were in
25 control.

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1 **Q.** Do you think people should have a choice about controlling
2 their information online?

3 **A.** Yes, absolutely. I believe everyone has the right to
4 decide what happens with their personal information.

5 **Q.** What would you like Google to know, if anything, through
6 this lawsuit?

7 **A.** You can't mislead people. You can't take people's
8 information without their permission. You can't make a fake
9 button that deceives people and get away with it. What you did
10 is wrong and you know it.

11 **Q.** Mr. Santiago, what relief are you asking for on behalf of
12 the class?

13 **A.** Google took a lot of data from millions of people that
14 obviously has value, and Google profited from that data. Those
15 profits belong to the people who own and created that data.
16 Those profits should go back to the class. And Google should
17 also be punished so they don't do stuff like this again. So
18 we're asking punitive damages.

19 **Q.** Thank you, Mr. Santiago.

20 **A.** Thank you.

21 **THE COURT:** Mr. Attanasio?

22 **MR. ATTANASIO:** Yes, Your Honor.

23 **THE COURT:** Just for your information, in about
24 five minutes we're going to take a break because our IT people
25 are here to see what they can do.

1 **MR. ATTANASIO:** Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 **BY MR. ATTANASIO:**

4 **Q.** Mr. Santiago, good morning for four more minutes.

5 You and I, other than a nod in the hallway, have never met
6 before; correct?

7 **A.** Yes. That is correct.

8 **Q.** My name is Mike Attanasio. I'm an attorney for Google.

9 **A.** Nice to meet you.

10 (Reporter interrupts to clarify the record.)

11 **BY MR. ATTANASIO:**

12 **Q.** My name is Mike Attanasio. I'm an attorney for Google.

13 Mr. Santiago, let's start, if we could, with the timeline.

14 I think you said this. I just want to walk through it.
15 You created your first personal Google Account in 2016; is that
16 correct?

17 **A.** That is correct.

18 **Q.** You turned off WAA for your Google Accounts in
19 September 2020; is that right?

20 **A.** I turned off WAA in my Gmail in September of 2020, yes.

21 **Q.** You remember that, in part, I believe, because at around
22 that time, you got a new laptop; is that fair?

23 **A.** That's correct, along with seeing this documentary that,
24 you know, was quite impactful.

25 **Q.** Do you remember talking about your new laptop, in

1 September 2020, causing you to go look at your settings and
2 then turn off WAA?

3 **A.** I got this new laptop and was setting up personal
4 preferences towards settings across the laptop, and that
5 included some of the privacy stuff, yes.

6 **Q.** Okay. And if we could look quickly -- I think I can do
7 this in the time we have, if we could look quickly at the
8 document, the Exhibit 941.R2, already in evidence, so we may
9 publish it. I think this will help us just tie down the
10 timeline and then it's forward ahead. Okay?

11 **A.** Great.

12 **MR. ATTANASIO:** Can we switch?

13 **THE COURTROOM DEPUTY:** I did.

14 **MR. ATTANASIO:** Thank you.

15 **THE COURTROOM DEPUTY:** Hold on. Let me...

16 **BY MR. ATTANASIO:**

17 **Q.** Do you recall, sir, that Mr. Monsees testified about this
18 document a few minutes ago? Mr. Santiago, you remember that?

19 **A.** Yes, I do.

20 **Q.** All right. And if we turn to page 4, please, middle of
21 the page, you see your name there?

22 **A.** Yes.

23 **Q.** Do you see the first email listed next to it?

24 **A.** Yes.

25 **Q.** Was that an email that you used for work?

1 A. That is -- that is a work email, yes, that I -- that I
2 opened up on the date of 9/22.

3 Q. September 22, 2020; yes?

4 A. Correct.

5 Q. Do you see that at the time you opened it up, just when
6 you started, you had WAA and sWAA on because that was the
7 default, I believe; fair?

8 A. Default, yep.

9 Q. Later that same day, if we go to the third row down, you
10 turned it off. It says "paused," but you and I can agree
11 "paused" means off; is that fair?

12 A. Yes.

13 Q. All right. If we look at the next email, that is your
14 personal email; correct?

15 A. Yes.

16 Q. Still your personal email today?

17 A. It is.

18 Q. And if we look at the first row, we see that, as you've
19 testified, you started your first Google Account in 2016; is
20 that correct?

21 A. That's what it says there, yeah.

22 Q. And if we look at the fourth row down from here, we see
23 that in September 2020, you paused or turned off WAA and sWAA
24 for that personal Gmail account; is that correct?

25 A. Yes.

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1 Q. All right.

2 MR. ATTANASIO: Your Honor, now would be a fine time
3 to take the break.

4 THE COURT: Members of the jury, remember my
5 admonitions not to discuss this amongst yourselves or with
6 anyone else.

7 And we'll resume, I hope, in 15 minutes. We'll have the
8 IT people working away in the meantime.

9 (Recess taken at 11:59 a.m.)

10 (Proceedings resumed at 12:20 p.m.)

11 (Proceedings were heard out of the presence of the jury.)

12 THE COURT: Are we ready to bring them out?

13 MR. ATTANASIO: Yes, Your Honor.

14 THE COURT: Okay.

15 (Proceedings were heard in the presence of the jury.)

16 THE COURT: The jury is present.

17 Members of the jury, we think it's fixed, but they've been
18 going off. They have a mind of their own. So if it goes off
19 again, just tell us. We think we may be able to, even without
20 the IT people, bring it back to life, but tell us if it does
21 conk out.

22 And we also -- as I mentioned to the lawyers, I know
23 it's -- for some reason it's getting warm in here. We're
24 trying to see if we can adjust it, but I think it's because
25 it's a warm day and the court system is not state-of-the-art,

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1 so it takes a little while to adjust. But, hopefully, we'll be
2 able to do that.

3 Okay. Mr. Attanasio, you may proceed.

4 **MR. ATTANASIO:** Thank you, Your Honor.

5 **BY MR. ATTANASIO:**

6 **Q.** Mr. Santiago, when we took our break, we had established
7 that you turned off your WAA and sWAA settings on your Google
8 accounts in September 2020; correct?

9 **A.** Yes.

10 **Q.** Let's go forward from there, if we could.

11 You did that because privacy is important to you; yes?

12 **A.** Privacy is, yes.

13 **Q.** Because privacy is important to you, you did not want
14 Google collecting any of your data; correct?

15 **A.** That's correct.

16 **Q.** So you turned those buttons off; yes?

17 **A.** Yes.

18 **Q.** There was an exception; correct?

19 **A.** An exception?

20 **Q.** Yes.

21 **A.** Which was?

22 **Q.** You left on -- do you remember what you left on?

23 **A.** I turned WAA off.

24 **Q.** Yes. Do you remember specifically that you left on WAA
25 and sWAA intentionally for YouTube?

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1 A. That's correct. I spoke about that at my deposition.

2 Q. Yes, you did.

3 A. I left YouTube available for some of the things that
4 Mr. Monsees spoke about, that I may have searches on my YouTube
5 available to me.

6 Q. No. Mr. Monsees talked about how, when sWAA is off,
7 Google needs to be able to continue to count views and
8 viewership so that they know what's going on with those videos
9 even though the user has turned it off. That's what he
10 testified about, sir.

11 You left it on; correct?

12 A. I left YouTube on, yes --

13 Q. Who owns YouTube?

14 A. -- but WAA was turned off.

15 Q. Who owns YouTube?

16 A. Google does.

17 Q. Pardon me?

18 A. Google.

19 Q. Are you aware -- did you look at the YouTube privacy
20 policy?

21 A. I looked at what was on the Google privacy policy, where
22 YouTube is one of the options.

23 Q. Yes. Did you look at the YouTube privacy policy?

24 A. I reviewed it, but not as thoroughly as Google's because
25 Google is owned -- or YouTube is owned by Google.

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1 Q. Right. Exactly.

2 So -- and your passionate interest about privacy caused
3 you to turn off the Google WAA and sWAA; correct?

4 A. Google WAA and sWAA turned off, yes.

5 Q. But over here, owned by Google is YouTube, which you
6 intentionally left on, knowing that it would track your
7 activity; correct?

8 A. That's correct. I was allowing YouTube to continue to be
9 tracked. Everything else on Google services and my apps, which
10 this case is about our -- the third-party apps, that would not
11 be tracked.

12 Q. Exactly. Are you aware that the YouTube privacy policy
13 states, "We adhere to Google's privacy principles"? Did you
14 read that at the time?

15 A. I don't recall that specifically.

16 Q. Are you aware that the YouTube privacy controls map to the
17 Google-wide controls, including WAA, but are separate? In
18 other words, if you leave them on, you've left them on? Are
19 you aware of that?

20 A. Can you repeat that, please?

21 Q. Yes. Are you aware that there's a WAA link on YouTube as
22 well?

23 A. The -- the WAA that we're talking about is from Google's
24 privacy policy. There's WAA and there's sWAA, and one of the
25 options is for YouTube, and I gave Google permission to keep

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1 track of my YouTube searches. They should not be collecting
2 anything else from any third-party apps.

3 Q. Do you know that the third-party apps who are partners of
4 Google also interact with YouTube for the same reasons, to
5 create personal experiences? Do you know that?

6 A. That's great. They have the data from YouTube available,
7 but third-party apps do not because of WAA turned off.

8 Q. WAA turned off on Google, WAA turned on at YouTube owned
9 by Google; is that a fair summary and we'll move forward? Yes?

10 A. Yes.

11 Q. All right. Let's talk about how you learned about this
12 case.

13 You heard about this case in the fall of 2020; correct?

14 A. In September of 2020, yes, late September.

15 Q. Same month you turned off WAA and sWAA for Google, not
16 YouTube; correct?

17 A. I turned it off on Google. It was a time where this
18 documentary had just come out, and it was a popular topic of
19 conversation amongst many circles, social circles, friends,
20 family. We were talking about how, you know, this
21 *Social Dilemma* documentary was a concern. So it was a topic of
22 conversation.

23 Q. I didn't -- if I -- if I asked you about the film or
24 movie, I apologize.

25 I just simply intended to ask you, and I think I did, you

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1 heard about this case in September 2020; correct?

2 A. Yes, after seeing the film.

3 Q. Okay. You heard about it at a dinner, correct, the case?

4 A. It was -- yes.

5 Q. The case wasn't in the movie, was it?

6 A. No.

7 Q. All right. You heard about it at a dinner in
8 September 2020 from a person named Tracy Lopez; correct?

9 A. Yes. She mentioned it.

10 Q. Pardon me?

11 A. Yes. She mentioned it.

12 Q. Tracy Lopez was the aunt of your then girlfriend; correct?

13 A. Yes. She still is.

14 Q. Tracy Lopez is the aunt of your spouse; correct?

15 A. Yes.

16 Q. Ms. Lopez at the time just happened to work at this law
17 firm, Boies Schiller; correct?

18 A. Yes. She was a secretary at the law firm.

19 Q. So you turned off WAA and sWAA in September 2020, and you
20 happened to have a conversation with an assistant at a law
21 firm, Tracy Lopez, also in September 2020. Do I have that
22 right?

23 A. Yes. Later that month, yes.

24 Q. And somewhere in there you saw this movie that you -- that
25 you want to tell us about; correct?

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1 **MR. LEE:** Objection. Mischaracterizes testimony.

2 **THE COURT:** Overruled.

3 **BY MR. ATTANASIO:**

4 **Q.** Yes?

5 **A.** I saw the film first. To be clear with the timeline, I
6 turned off WAA after seeing the film because of my concerns and
7 wanting to take privacy more seriously. And through -- it was
8 a topic of conversation during that time amongst several
9 dinners and friend groups and communications, and one of them
10 happened to be this Tracy Lopez, yes.

11 **Q.** So the answer to my question is "yes"?

12 **A.** Can you repeat it, please?

13 **Q.** Ms. Lopez told you about the case that brings us here
14 today in front of this jury; correct?

15 **A.** She mentioned the case, yes, at the dinner party.

16 **Q.** Ms. Lopez gave you information that allowed you to call
17 the law firm Boies Schiller, one of the multiple law firms
18 represented here today; correct?

19 **A.** She knew of the case's general existence and gave me
20 contact information to -- so I could reach out and get in
21 contact with the right people regarding the case, yes.

22 **Q.** You did that; correct?

23 **A.** Yes, I did.

24 **Q.** You called Boies Schiller; correct?

25 **A.** Yes.

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1 Q. You called Boies Schiller and the person you spoke to is
2 the attorney who just questioned you, Mr. Lee; correct?

3 A. I spoke with a secretary first, and then she put me in
4 contact with Mr. Lee.

5 Q. Okay.

6 A. I had never heard of or met Mr. Lee or any of the other
7 attorneys before that moment.

8 Q. And as you've just shared with us, turning off WAA and
9 sWAA, talking to Tracy Lopez, talking to Mr. Lee, those things
10 happened in September 2020; correct?

11 A. Yes. I turned off WAA and sWAA in mid-September, and then
12 later on met Mr. Lee in late September of 2020.

13 Q. Okay. And I heard you say to this jury that when my law
14 partner, Mr. Hur, in opening statement, said that the
15 plaintiffs turned sWAA off after learning about the case -- do
16 you recall being asked that question by Mr. Lee?

17 A. Can you --

18 Q. Yes.

19 A. -- reword that, please, or --

20 Q. Sure.

21 A. -- say that wording again?

22 Q. Yes.

23 Do you recall Mr. Lee describing to you the opening
24 statement of Mr. Hur?

25 A. Yes.

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1 Q. And stating to you that Mr. Hur said, in his opening
2 statement to the jury, that the jury would hear that the
3 plaintiffs in this case turned WAA and sWAA off after joining
4 the lawsuit. Do you recall that?

5 A. We turned WAA off before we heard -- I heard about the
6 lawsuit.

7 Q. Understood. I understand that's your testimony.

8 You were asked, just a few minutes ago, about Mr. Hur's
9 supposed statement in opening statement that you turned it off
10 after joining the lawsuit. Do you recall that?

11 A. That's what he said, but I don't -- that's not true.

12 Q. Exactly. You testified to this jury under oath that when
13 Mr. Hur said that, it was untrue; correct?

14 A. Yes.

15 Q. Okay. I happen to have the transcript here. This is
16 August 19th, 2025, page 252. Mr. Hur stated in his opening
17 statement [as read]:

18 "You did not hear that each of the plaintiffs
19 turned their sWAA setting off shortly before or after
20 meeting their lawyers so that they could become class
21 representatives."

22 So what he said was that you and the other class reps
23 turned sWAA off before or after meeting their lawyers; is that
24 untrue?

25 A. Before.

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1 Q. Correct. So what Mr. Hur said is true; yes?

2 A. Look, I'm just a normal guy. I'm not a lawyer. I'm
3 having trouble following along with all the wording.

4 Q. Sir, you didn't have any trouble following along when you
5 were asked about whether a lawyer in this case for Google made
6 a statement to this jury that was true or untrue. You didn't
7 have any problem saying that this Mr. Hur, my law partner, said
8 something in this courtroom that was untrue. You just
9 testified to that 25 minutes ago; right?

10 A. What he said was misrepresented to me if it was not what
11 he -- exactly what he said.

12 Q. Who misrepresented it to you?

13 A. I turned off WAA before hearing about the lawsuit. That's
14 all I was trying to confirm.

15 Q. Have you noticed I haven't quarreled with you one bit
16 about that; yes?

17 A. That's correct. I don't remember exactly what Mr. Hur
18 said yesterday about before or after. I thought it was about
19 before. But thank you for reading it now, and we could agree
20 now.

21 Q. We can agree now after you said that that man lied to the
22 jury?

23 A. I didn't say that. I agreed with something else said.

24 Q. Who misrepresented that to you?

25 A. I don't know if it was misrepresented or misheard.

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1 Q. You just said it was misrepresented three minutes ago.
2 Who misrepresented it to you?

3 A. If -- my previous counsel.

4 Q. Your current counsel.

5 A. My -- yeah. Counsel who spoke previously, yes.

6 Q. So to set this up for the jury that Mr. Hur told an
7 untruth, told a whopper in this courtroom, your attorney
8 misrepresented something to you; is that fair?

9 A. I -- I have a lot of things mixed up in my head right now.
10 I'm not used to being in a position like this, and it's a lot
11 of lingo coming at me.

12 Q. Sir, if you don't understand anything I ask, you just say
13 so. I'll do better.

14 A. I appreciate that.

15 Q. But right now I'm still focused on the idea, as a lawyer,
16 by the way, who sits here and does his best, as do these folks,
17 that you would take that stand and look down over here and say
18 he said something that was not true. That's a big deal. Why
19 did you do that?

20 A. If what he was saying was that Google -- or that WAA was
21 turned off before the lawsuit, that is true.

22 MR. ATTANASIO: Your Honor, may I approach?

23 THE COURT: Yes.

24 MR. ATTANASIO: Thank you.

25 \\\

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1 **BY MR. ATTANASIO:**

2 **Q.** I want to make sure we're completely fair.

3 **A.** Thank you.

4 **Q.** That's the official transcript right there. I've
5 highlighted it.

6 **MR. LEE:** Is there a copy?

7 **MR. ATTANASIO:** I've already called the page out.
8 It's 252. It's a daily transcript.

9 **THE WITNESS:** Yes, it says, "shortly before or after
10 meeting their lawyers."

11 **BY MR. ATTANASIO:**

12 **Q.** Meaning it's 100 percent true; correct?

13 **A.** Some tricky terminology. If you're saying it's saying two
14 different things, I suppose. Before or after are two different
15 moments in time.

16 **Q.** Well, we're going to learn that your other colleague
17 turned it off after. I accept that you turned it off before.

18 So it's a hundred percent true statement; correct?

19 **A.** In those terms, then, yes.

20 **Q.** Now, you are not the only class representative in this
21 case; correct?

22 **A.** Yes, correct.

23 **Q.** As of a week ago, there were four class representatives;
24 is that true?

25 **A.** I believe there was three.

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1 Q. Okay. You're aware of the class representative named
2 Mr. Anibal Rodriguez; correct?

3 A. I am.

4 Q. And Mr. Rodriguez is here with us at the end of the table;
5 yes?

6 A. That's him.

7 Q. And you said there were three. There's also a class
8 representative named Susan Harvey; is that right?

9 A. There was, yes.

10 Q. There was?

11 A. I don't see her here.

12 Q. Have you ever met Ms. Harvey?

13 A. I met her in passing earlier this -- this week before she
14 left.

15 Q. Left San Francisco?

16 A. I believe so. I don't know the details of where she left
17 to.

18 Q. Where did you meet her? Where were you?

19 A. At our hotel.

20 Q. What hotel is that?

21 A. The --

22 MR. LEE: Objection, Your Honor.

23 THE COURT: What is the relevance of the hotel they're
24 staying at?

25 MR. ATTANASIO: Just the circumstance of their

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1 meeting, Your Honor.

2 **THE COURT:** Move on.

3 **MR. ATTANASIO:** Yes, sir.

4 **BY MR. ATTANASIO:**

5 **Q.** So you saw her a few days ago; is that fair?

6 **A.** Met her briefly, shook her hand, and that was it.

7 **Q.** Okay. By the way, as a class representative, you know
8 that you are in line for what's called an incentive payment
9 should the case be successful; correct?

10 **A.** I'm unaware of that. I'm here to do what I can for this
11 class.

12 **Q.** You never heard anything about that?

13 **A.** No.

14 **Q.** Let's talk about your continued use of apps and how that's
15 affected you, Mr. Santiago.

16 You've said that the idea of Google receiving your app
17 data is extremely psychologically distressing; is that correct?

18 **A.** It's difficult, yes.

19 **Q.** You think about it every day; correct?

20 **A.** I -- it's something I have to deal with on a daily basis.

21 **Q.** And because Google gets this depersonalized data in the
22 aggregate, you've even tried exercise and meditation to reduce
23 your anxiety about Google; is that correct?

24 **A.** I exercise and meditate, yes.

25 **Q.** Because of this circumstance that brings us here; correct?

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1 A. It's one of them, sure.

2 Q. All right. You haven't sought out any doctors for your
3 psychological distress in this case, have you?

4 A. No.

5 Q. You've not sought out a therapist because of what you
6 believe Google's done, have you?

7 A. I've spoken with therapists, and I try to take a holistic
8 approach to my health.

9 Q. You recall being asked in your deposition whether you've
10 seen a therapist about Google's conduct?

11 A. I recall being asked that, yes, and that was several years
12 ago.

13 Q. It was 2022, sir.

14 A. Yeah.

15 Q. Correct?

16 A. Yeah. Three years ago.

17 Q. Okay. Is it your testimony now that you have seen a
18 therapist because of the allegations in this case?

19 A. I have seen a therapist about several things, including
20 privacy, yes.

21 Q. My question is slightly different.

22 Is it your testimony to this jury that you've seen a
23 therapist because of the allegations you've made in this case?

24 A. The things that I've discussed with my therapist would be
25 between us.

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1 Q. I'm not asking you about any of them, sir.

2 Okay. And you have not been -- as of the time of your
3 deposition, you've not been diagnosed with any psychological
4 disorder as a result of what you say Google does with your
5 data; correct?

6 A. No.

7 Q. As the time of your deposition, you've not been prescribed
8 any medications because of what you say Google does about your
9 data; correct? Is that right?

10 A. Again, I try to take a holistic approach to my health.

11 MR. ATTANASIO: Okay. Let's look at Demonstrative
12 Slide Number 3 that the plaintiffs put up a few minutes ago, if
13 we could, Brooklyn.

14 BY MR. ATTANASIO:

15 Q. I'd like to talk to you about the apps you use,
16 Mr. Santiago.

17 This is a list of apps you use that have the Google
18 analytics tool. Am I understanding this correctly?

19 A. Yes. The Google SDKs, correct.

20 Q. You have other apps beyond these; yes?

21 A. I -- there's other apps on my phone, but this is
22 definitely a large majority of them.

23 Q. Okay. That's fine.

24 You downloaded -- you personally downloaded and installed
25 all of these apps; is that true?

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1 **A.** Yes, I did.

2 **Q.** I count 42 apps on this page. Will you take my count on
3 that?

4 **A.** Yes, I'll take your word.

5 **Q.** All right. You are aware, of course, that each of these
6 apps, all 42, had their own terms of service and privacy
7 policies; correct?

8 **A.** Yes, they do.

9 **Q.** As you sit here, you don't know all of the terms of
10 service and privacy policies for these 42 apps, of course; is
11 that fair?

12 **A.** I don't know them by heart, but I'm sure the ones -- the
13 apps I frequently use, I've reviewed.

14 **Q.** You would have reviewed the privacy policies and the terms
15 of service?

16 **A.** In the -- in some --

17 **MR. LEE:** Objection, Your Honor. There's a
18 motion in limine on this.

19 **THE COURT:** Not really, no. Overruled.

20 **BY MR. ATTANASIO:**

21 **Q.** Go ahead.

22 **A.** Some of the big apps that I use that are large companies,
23 again, for example, Target, I may have reviewed, yes.

24 **Q.** All right. Which other ones would you have reviewed the
25 terms of service and privacy policies, other than Target?

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1 A. Probably E*Trade.

2 Q. Okay.

3 A. Marcus because it's, you know, financial focused, a
4 financial app. Ticketmaster, big companies.

5 Q. And did you find out if any of these apps that are
6 displayed on this slide, including the ones you just mentioned,
7 use Google Analytics?

8 A. Sorry. I didn't follow along all the way. Can you repeat
9 that, please?

10 Q. Sure.

11 Did you ever determine whether any of the apps on Slide 3
12 here, including the ones you just mentioned, use
13 Google Analytics?

14 A. It wasn't until after we filed this that I learned that,
15 that I learned that Google SDKs were on all these apps.

16 Q. Understood.

17 So before you learned it in this litigation, did you ever
18 go look on the terms of service or the privacy policies to see
19 what these third-party apps do with a partner like Google?

20 A. I don't recall specifically, no.

21 Q. What about Target? Do you know if Target discloses what
22 it does?

23 **THE COURT:** This is not going to the question of
24 whether or not these apps have privacy policies or not. This
25 is going to the issue of this witness's concern for privacy,

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1 and that is why it is appropriate testimony.

2 But there's no suggestion that these -- whatever policies
3 these third parties may have has relevance independently in
4 this case.

5 So you can proceed.

6 **MR. ATTANASIO:** Thank you, Your Honor.

7 **BY MR. ATTANASIO:**

8 **Q.** Do you remember the question?

9 **A.** No.

10 **Q.** What about Target? Did you determine whether Target
11 interacts with Google?

12 **A.** Target may interact with Google, but I have my own
13 agreement with Google. I told Google that they would not be
14 able to collect my data when they put me in control; and if
15 Target wants to send something back to Google, my own agreement
16 with Google says that they should not be collecting that.

17 **Q.** Sir, not my question.

18 My question is: Did you determine, when you reviewed the
19 terms of service and the privacy policy for Target, whether
20 Target interacts with Google in any way?

21 **A.** I don't recall that exactly.

22 **Q.** You have played fantasy football for several years; is
23 that correct?

24 **A.** Yes, I have.

25 **Q.** Let's just make sure we're all on the same page. I'll do

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1 my best, because I don't.

2 But fantasy football involves having a team that you own.
3 You can draft players from different teams around the NFL to
4 create your own team. There's a point-scoring system based on
5 the players you have on your team, and you compete with other
6 team owners who do the same thing, usually a group of friends.
7 Is that fair?

8 A. Yeah, that sounds right.

9 Q. Often there's a cash prize at the end. Everybody
10 contributes money, and there can be a cash prize at the end
11 that can be real money; true?

12 A. There can be, yes.

13 Q. How long have you played fantasy football?

14 A. I'd say, I guess, about ten -- ten-ish years.

15 Q. Okay. The sports network ESPN has an app for fantasy
16 football; yes?

17 A. They do, yes.

18 Q. It's on this screen here under "ESPN Fantasy." Do you see
19 that?

20 A. Yes.

21 Q. Did you check the terms of service and privacy policy for
22 the ESPN Fantasy app?

23 A. Yes, I do, and I remember bringing up to my league mates
24 about switching after I found out that ESPN Fantasy had Google
25 SDKs.

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1 And, you know, it's difficult -- it's a huge ask to ask
2 people to not use all of their apps on their phone and
3 basically not use their phones unless -- there shouldn't be
4 tracking on it. And unfortunately, I was overruled in my
5 fantasy league and we continue using that app.

6 Q. Do you use it today?

7 A. I believe there will be a league with that app, yes.

8 Q. Well, the league starts in two weeks.

9 A. Yes.

10 Q. You've already done your draft. I know you've probably
11 done your draft by now.

12 A. I have not, no.

13 Q. Okay.

14 A. It's coming up.

15 Q. But the point is, your league with you and your friends,
16 you're going to continue to use the app that we have
17 highlighted here, ESPN Fantasy; yes?

18 A. Yes. It's difficult to be able to go somewhere else. If
19 we switch to another app, how do we know if the other app has a
20 Google SDK as well? We can't look that up anywhere.

21 Q. Sir --

22 A. We don't know where -- if the other apps have SDKs.

23 Q. Sir, you are aware there are countless websites competing
24 every day for fantasy participants, for gambling participants
25 around the NFL. They're everywhere. They are literally

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1 everywhere, competing with each other, offering to port over
2 your data from one fantasy app to another fantasy app. You
3 know that, don't you?

4 **A.** There's also 12 other people in the league that need to be
5 willing to change. It's not just up to me. And like I said,
6 let's say we do switch apps. Let's say we go to another
7 fantasy app in this example. How do we know the other fantasy
8 app doesn't have a Google SDK as well? It's everything. It's
9 everywhere. What do you want us to do? Not use our phones?

10 **Q.** I don't see Bleacher Report on this list. That's a
11 sports-related site, isn't it?

12 **A.** Bleacher Report is a sports-related site. They don't
13 offer fantasy football.

14 **Q.** Hmm. That's a sport-related app that you have; correct?

15 **A.** I do.

16 **Q.** That advertises alternatives to ESPN Fantasy; correct?

17 **A.** I -- I imagine -- I don't know their advertisers, but they
18 do not have a fantasy option of their own.

19 **Q.** All right. Well, we're talking about -- let's be clear.
20 We're talking about fantasy football here. That's what we're
21 talking about; right?

22 **A.** Sure.

23 **Q.** You used the ESPN Fantasy app before you saw the movie;
24 correct?

25 **A.** Yes, I'd say so.

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1 Q. Before you turned sWAA and WAA off; correct?

2 A. Yes.

3 Q. Before you joined this lawsuit; correct?

4 A. Correct.

5 Q. And you used ESPN Fantasy app after you saw the movie,
6 after you turned off WAA and sWAA, and after you joined this
7 case and you use it to this day; correct?

8 A. That's correct. And it is my responsibility to this
9 class, as previously mentioned, to continue those behaviors,
10 to -- so we can figure out what Google is collecting, where
11 that information is being stored, and so we can get Google to
12 delete that information. There are reasons for me continuing
13 to use that. If I stop using these apps, you're going to say
14 that I'm no longer in harm.

15 MR. ATTANASIO: Your Honor, objection.

16 Non-responsive. Move to strike everything after "That's
17 correct."

18 THE COURT: Overruled.

19 BY MR. ATTANASIO:

20 Q. Mr. Santiago, after you joined the case in November 2020,
21 you also continued to use the app that was then called Twitter;
22 correct?

23 A. I'd say on and off.

24 Q. You continued to use it on and off; is that fair?

25 A. Yes.

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1 Q. After you turned off WAA and sWAA; true?

2 A. Yes, I continued to use it. And, again, I needed to
3 continue to use it so that we could figure these things out.
4 If I would have stopped using it, our expert does not find out
5 where this information is going and what information is being
6 collected.

7 THE COURT: Just answer his questions. Okay?

8 THE WITNESS: Yes, sir.

9 THE COURT: Don't elaborate. Your counsel can get up
10 and ask you to elaborate, if they so choose, but stick to the
11 question.

12 THE WITNESS: Understood.

13 THE COURT: Go ahead. Next question.

14 MR. ATTANASIO: Thank you.

15 BY MR. ATTANASIO:

16 Q. You continued to interact with X, which used to be
17 Twitter, today; correct?

18 A. Like I said, on and off, yes.

19 Q. You use an app called MapMyRide, M-a-p-M-y-R-i-d-e;
20 correct?

21 A. Yes, for keeping track of bike rides.

22 Q. It's an app that tracks your bike rides, tracks your
23 exercise activity; yes?

24 A. Yes, within that app.

25 Q. It's a third-party app that has Google Analytics; correct?

PROCEEDINGS

1 **A.** Yes. It's on this list.

2 **Q.** You used it before you joined the lawsuit; correct?

3 **A.** Yes.

4 **Q.** Despite your anxiety about Google's alleged invasion of
5 privacy, you continue to use it; correct?

6 **A.** Again, I'm not sure what you're asking us to do here. If
7 we switch to another app, they could also have Google Analytics
8 on it. You're asking us to not use any apps and essentially
9 not use any phones. That's a very big ask in this modern world
10 where we rely on technology to get by in our daily lives.
11 You're not just asking me that. You're asking 100 million
12 people.

13 **THE COURT:** Again, again, let -- you will -- your
14 counsel will get up --

15 **THE WITNESS:** Okay.

16 **THE COURT:** -- and ask you to explain further if they
17 think that's appropriate, but don't launch into an answer
18 beyond the question. Just answer the question.

19 **THE WITNESS:** Understood, Your Honor. Thank you.

20 **BY MR. ATTANASIO:**

21 **Q.** The question was simply: After you joined the lawsuit,
22 and despite your anxiety about Google's alleged invasion of
23 privacy, you continued to use this tracker for your bike rides;
24 correct?

25 **A.** Yes, information that should have stayed in the app.

PROCEEDINGS

1 Q. Last one here.

2 You use the Target app?

3 A. Yes.

4 Q. For shopping?

5 A. That's correct.

6 Q. You continued to use the Target app after you joined the
7 lawsuit and despite your anxiety about Google's alleged
8 invasion of privacy; correct?

9 A. Yes, I continue to shop at Target.

10 Q. Using the app that you know links up to its partner,
11 Google; correct?

12 A. We now know that, yes.

13 MR. ATTANASIO: We can take that down, Brooklyn.

14 THE COURT: Actually, as that's being taken down, it
15 occurs to me I should have mentioned to you, members of the
16 jury, you keep hearing us, from time to time, talk about
17 demonstratives, and this last item was a demonstrative.

18 What that is, is it's something that the counsel are using
19 to help develop the testimony and explain to you, but it is not
20 independent evidence. So that's a good example. That's a
21 document that will not be evidence in this case, but it is
22 being shown to you to help and assist in the testimony.

23 So when you hear "demonstrative," don't think that is a
24 piece of evidence in the case. It's just there to assist in
25 explaining what the testimony is all about.

PROCEEDINGS

1 Go ahead --

2 **MR. ATTANASIO:** Thank you, Your Honor.

3 **THE COURT:** -- Mr. Attanasio.

4 **BY MR. ATTANASIO:**

5 **Q.** Mr. Santiago, you've told us about these strong feelings
6 you have about privacy. In fact, you recall that you believed
7 there were times when you appeared stressed out at work and
8 your co-workers commented on your apparent stress; is that --
9 is that fair?

10 **A.** I have been stressed out at work, yes.

11 **Q.** But you never told any of your co-workers about these
12 violations of your privacy by Google or warned them, did you?

13 **A.** After this lawsuit was filed and some of these documents
14 were, you know, publicly filed, I've shared with friends and
15 co-workers to be careful about, you know, their WAA data and
16 that it's still being collected.

17 **Q.** Well, as of March 2022, when you were deposed, do you
18 recall that you testified you had not told your co-workers
19 about Google invading your privacy; correct?

20 **A.** At that time, I have not -- I had not, no.

21 **Q.** Well, we established that the movie was in September 2020.
22 Your deposition was in March 2022. So despite your strong
23 feelings, you didn't warn, up to March 2022, any of your
24 co-workers or friends about what Google was supposedly doing;
25 correct?

PROCEEDINGS

1 A. Well, yes, I had conversations with people about privacy
2 in general; but as far as WAA specifically, we were in the
3 middle of this lawsuit. So I discuss -- I had conversations
4 and warnings about being careful with privacy in general.

5 Q. But not Google; correct?

6 A. Like I said, it was an ongoing investigation and lawsuit.

7 Q. Well, the lawsuit was publicly filed in this very court at
8 that time; correct?

9 A. 2022, you mean?

10 Q. Yes, sir.

11 A. Yes.

12 Q. The lawsuit had your name in it. It had where you live in
13 Florida, your city; correct?

14 A. Yes.

15 Q. And the lawsuit even had a page, much like what we just
16 looked at, that listed all of your apps, didn't it?

17 A. Yeah. Yes.

18 Q. So all of that was out there in the public. Despite the
19 privacy concerns, all your apps, your name, your city, were all
20 in the lawsuit in this case; correct?

21 A. Yes.

22 Q. But you didn't tell any of your friends or co-workers, at
23 least up to March 2022, about Google's alleged invasion of
24 privacy; correct?

25 A. At that point, no. And, you know, like I said, I'm a

PROCEEDINGS

1 regular guy. I'm not a lawyer. I wanted to be careful about
2 discussing privileged information or anything of the sort.

3 **Q.** Let's talk about these exhibits you were shown about some
4 of Google's policies.

5 The first one was Exhibit 117. Do you have it up there?

6 **A.** No, I do not.

7 **Q.** It should be in your binder.

8 **A.** I have 116.

9 **Q.** All right. Maybe 117 was added by your lawyers later.

10 No, this is still the first binder that they gave us --
11 that the plaintiffs gave us. That's okay.

12 I always keep a spare copy, Mr. Santiago.

13 **MR. ATTANASIO:** May I approach, Your Honor?

14 **THE COURT:** Yes, you may.

15 **THE WITNESS:** Thank you.

16 **BY MR. ATTANASIO:**

17 **Q.** It will also be on the screen. This is already admitted.

18 **THE COURTROOM DEPUTY:** 117?

19 **MR. ATTANASIO:** 117.

20 **MR. LEE:** I believe 116 was admitted.

21 **THE COURTROOM DEPUTY:** 116 was.

22 **MR. ATTANASIO:** All right. Thank you. Thank you.

23 Then the binder will be fine.

24 **THE COURTROOM DEPUTY:** Putting up 116.

25 **THE WITNESS:** Did you want that back?

PROCEEDINGS

1 BY MR. ATTANASIO:

2 Q. No. You can keep it.

3 And this is what you discussed, Exhibit 116, earlier in
4 your examination; is that correct?

5 A. Yes.

6 Q. And I want to walk through some of the parts you didn't
7 cover because you went right sort of down to the bottom part of
8 the page.

9 If we look at the top part of the page that starts this
10 off, sort of the title of it, it says, "See and control your
11 Web & App Activity." Do you see that?

12 A. Yes, I do.

13 Q. And the first sentence says [as read]:

14 "If Web & App Activity is turned on, your
15 searches and activity from other Google services are
16 saved in your Google Account."

17 Underlined "Google Account," please, Brooklyn.

18 And then it goes on from there about the personalized
19 experiences; correct? Yes?

20 A. Yes, I see that.

21 Q. All right.

22 A. "Google Account" is a bit deceptive, I think.

23 Q. Pardon me?

24 A. The terminology of "Google Account" is quite deceptive.

25 Q. Okay. You have talked to me about your Google Account.

PROCEEDINGS

1 You got your Google Account in 2016; correct?

2 A. No. We talked about my Gmail.

3 Q. Okay. You have a Google Account; correct?

4 A. I have a Gmail account.

5 Q. Let's go back to Exhibit 116.

6 It goes on in the third paragraph, it says [as read]:

7 "If you got your Google Account through work or
8 school, you might need to contact your administrator,
9 et cetera."

10 Right?

11 A. That's what it says there, yes; but, again,
12 "Google Account" a bit deceptive.

13 Q. You feel it's deceptive; yes?

14 A. I wouldn't say it's just me.

15 Q. I'm asking you about what this says, sir. If you could
16 just focus on my question, we'll be done before the end of the
17 day, I promise. You with me?

18 A. I'm with you, yeah.

19 Q. All right. I'm not asking you about whether it's, in your
20 judgment, in your opinion, deceptive or not. I'm asking you if
21 that's what it says. Do you see that?

22 A. That's what it says there, and I have to say it comes
23 off -- it's deceptive, and it's not just me that thinks that.

24 **THE COURT:** Mr. Santiago, just answer the question.

25 I've told you this many times now.

PROCEEDINGS

1 **THE WITNESS:** Yes, Your Honor.

2 **THE COURT:** Your counsel can get up and ask you to
3 elaborate afterwards, but don't editorialize beyond the
4 question. Okay?

5 **THE WITNESS:** Understood.

6 **THE COURT:** Very good.

7 Go ahead, Mr. Attanasio.

8 **MR. ATTANASIO:** Thank you.

9 **BY MR. ATTANASIO:**

10 **Q.** If we go down to the next segment of this disclosure and
11 see more of the sort of title summary of it, do you see it
12 says, "Turn Web and app activity on or off"? Do you see that,
13 Mr. Santiago?

14 **A.** I see that.

15 **Q.** Number one [as read]:

16 "On your Android phone or tablet, open your
17 device's settings app, go to Google, go to manage
18 your Google Account."

19 Would you underline, please, "your Google Account,"
20 Brooklyn?

21 So looking at the words on this page, sir, you understand
22 this is talking about the user's Google Account; correct?

23 **A.** I don't have an Android phone. I have an Apple iPhone.

24 **Q.** Is that a "yes," this is talking -- I didn't ask you what
25 kind of phone you have. Is this talking about a user's

PROCEEDINGS

1 Google Account?

2 **A.** It's talking about a user's Google Account on their
3 Android phone or tablet.

4 **Q.** Let's talk about the privacy policy then, Mr. Santiago.
5 You read Google's privacy policy even before you joined
6 this lawsuit; is that true?

7 **A.** Yes, I did.

8 **Q.** You've actually reviewed Google's privacy policy on
9 multiple occasions, going back to when you had a Gmail account;
10 correct?

11 **A.** Back to when I first opened it, yes.

12 **Q.** That's back to 2016; yes?

13 **A.** Yes.

14 **Q.** You even read the updates; is that correct?

15 **A.** I try to review them if I have a moment, when it comes
16 across, if I'm notified of it.

17 **Q.** You read them; correct?

18 **A.** I try to review them, yes.

19 **Q.** So in the world we live in where many people might scroll
20 through quickly and then hit "I agree," you're not one of
21 those? You read the policy, at least for Google; correct?

22 **A.** I try to be more thorough, yes, especially for a big
23 company like Google.

24 **Q.** You even have gone out -- other than getting an update
25 from Google, you've taken your own time to go out and search

PROCEEDINGS

1 and look for the Google privacy policy so you could read it
2 again; correct?

3 **A.** Yes, after seeing the documentary, I did.

4 **Q.** And for Google, at least, you don't just skim the policy.
5 You review it, I think these were your words, in depth; is that
6 correct?

7 **A.** Yes, I read it.

8 **Q.** So you looked at the July 2020 policy with counsel today,
9 which is Exhibit 67, already in evidence.

10 If we could look at that again, please.

11 Do you have it?

12 **A.** Yes, I do. Thanks.

13 **Q.** At the top left, you see it says "Google Privacy Policy"?

14 **A.** Yes.

15 **Q.** A third of the way down, it's the effective date, which
16 you mentioned, July 1st, 2020; is that right?

17 **A.** Yes.

18 **Q.** And if we go to the bottom of page 2, do you see it says
19 at the bottom in big letters [as read]:

20 "Information we collect as you use our
21 services."

22 Do you see that, sir?

23 **A.** Yes, I see it says that.

24 **Q.** And that's -- you understood what that meant; right? It
25 meant information that Google collects when a user engages with

PROCEEDINGS

1 Google; correct?

2 **A.** Sure. If WAA was turned on, it would -- that's the
3 information it would collect.

4 **Q.** Okay. Let's look at page 3. And do you see in the middle
5 of the page -- and Mr. Monsees covered this -- but you see it
6 says, "Your activity"?

7 **A.** Yes.

8 **Q.** You would understand the "your" in that sentence to be the
9 user; correct?

10 **A.** Yes.

11 **Q.** Including you; yes?

12 **A.** Including me, yes.

13 **Q.** If we go to the second-to-the-last bullet point, you see
14 that one of the things -- actually, let's go back up to the
15 last sentence of the first paragraph. Thank you.

16 It starts with "The activity information we collect may
17 include," then it goes from there; correct?

18 **A.** Yes.

19 **Q.** And the second-to-the-last bullet point, Google states
20 that it may collect information about the user from activity on
21 third-party sites and apps that use our services. Is that what
22 it says?

23 **A.** Yes, that's what it says. And, again, I would understand
24 that to mean that if WAA was on, that would be the case.

25 **Q.** I'm only asking you if that's what it says. Is that what

PROCEEDINGS

1 it says?

2 A. Yes.

3 Q. Would you have reviewed that at the time you were doing
4 these in-depth reviews of Google's privacy policies?

5 A. I read that, yes.

6 Q. Down below that, at the bottom of the page, let's see what
7 it references here. Well, it says at the very bottom
8 [as read]:

9 "You can visit your Google Account to find and
10 manage activity information that's saved in your
11 account."

12 Is that what the privacy policy that you reviewed states,
13 sir?

14 A. Yes. Google's allowing us to be in control of managing
15 our activity and what is saved.

16 Q. You read that at the time?

17 A. Yes.

18 Q. You knew that at the time, the "time" meaning before you
19 joined this lawsuit, and after you joined this lawsuit;
20 correct?

21 A. That's correct.

22 Q. All right. Let's go to page 12, if we could.

23 Yes, thank you.

24 At the bottom of the page, last paragraph, now, let's look
25 here, Mr. Santiago. This says very directly [as read]:

PROCEEDINGS

1 "We" -- meaning Google -- "may share
2 non-personally identifiable information publicly and
3 with our partners, like publishers, advertisers,
4 developers, or rights holders."

5 Have I read that correctly?

6 **A.** That's what it says, yes.

7 **Q.** And from this case, even from opening statement, from
8 Mr. Monsees, you know what "non-personally identifiable
9 information" means; correct?

10 **A.** That's still my information.

11 **Q.** That's not my question.

12 You understand that "non-personally identifiable
13 information" means exactly what it says, information that
14 cannot be used to identify a single person; correct?

15 **A.** I understand it's still my gender, my app activity, my
16 IP address, my unique device identifiers. It's still my
17 information.

18 **Q.** Are you done with your answer?

19 **A.** Yes.

20 **Q.** Please just focus on my question. I will ask it again.

21 You understood, at the time you reviewed this policy in
22 depth, that "non-personally identifiable information" means
23 information that cannot be used to identify a particular
24 person; correct?

25 **A.** I think that's still my information.

PROCEEDINGS

1 Q. That's not my question of whether it's your information or
2 not.

3 It is non-personally identifiable information, meaning it
4 cannot be used to identify an individual person; correct?

5 A. I think it still can be. It's everything about me besides
6 my name.

7 Q. Everything -- okay. Let's make sure we have this under
8 oath.

9 Your position is that non-personally identifiable
10 information is everything about you except your name, Julian
11 Santiago; correct?

12 A. It's my unique device identifiers. It's my IP address.
13 It's my location. It's all of my apps, what I've downloaded,
14 what I've looked at, what I've bought, what I've clicked on,
15 what I've looked at. The list goes on.

16 Q. Sir, is it your testimony that non-personally identifiable
17 information, as you just said a minute ago, is everything about
18 you except your name, Julian Santiago? That's just what you
19 told the jury. Is that true?

20 A. From what I understand, it's everything besides my name
21 and my email address. It's pretty much everything else on my
22 phone.

23 Q. I'm glad we -- I'm glad we established that. I believe
24 we'll leave your testimony right there.

25 It then goes on. It states [as read]:

PROCEEDINGS

1 "For example, we share information publicly to
2 show trends about the general use of our services.
3 We also allow specific partners to collect
4 information from your browser or device for
5 advertising and measurement purposes using their own
6 cookies or similar technologies."

7 Now, Mr. Santiago, maybe you disagree -- if you do, just
8 say so -- but that sounds an awfully -- awful lot like what
9 Mr. Monsees described Google does with de-identified
10 non-personal information. Do you agree?

11 **A.** I'm not a software engineer. It's a lot of different
12 terminology and things that I don't fully understand. I can't
13 answer that for sure. I'm not certain.

14 **Q.** Well, you said you read these in depth. You were really
15 into them. You'd go look for them. You'd read the updates.
16 You'd read it several times. Correct?

17 **A.** What was your question originally?

18 **Q.** Do you agree that what is being described in the last
19 sentence of this disclosure is exactly what Mr. Monsees
20 describes Google does with non-personally identifiable
21 information?

22 **A.** I recall Mr. Monsees mentioning that some of our
23 information goes towards ads but that he doesn't know where all
24 of it goes --

25 **Q.** Do you recall --

PROCEEDINGS

1 **A.** -- what other places it goes.

2 **Q.** Do you recall him testifying that the apps use it for
3 measurement purposes to track performance? Do you recall that?

4 **MR. LEE:** Objection. He's just parroting from a
5 different witness that we already heard today, commenting on
6 somebody else's testimony and asking the witness to comment on
7 it.

8 **MR. ATTANASIO:** I'm asking if the witness agrees just
9 to cut to the bottom line. I can rephrase if Your Honor would
10 like.

11 **THE COURT:** If you have a proposition you want to know
12 if the witness agrees to our not, you don't have to say as some
13 other witness said. You can just ask about the proposition.
14 So why don't you do that.

15 **MR. ATTANASIO:** Understood. Thank you, Your Honor.

16 **BY MR. ATTANASIO:**

17 **Q.** Mr. Santiago, do you understand that Google Analytics uses
18 non-personally identifiable information and shares it with its
19 partners for advertising and measurement purposes using those
20 partners' or apps' cookies or similar technologies? Do you
21 understand that?

22 **A.** I don't understand how it works, but that still sounds
23 like my information is being used and -- for certain things
24 that we don't know where it's going.

25 **Q.** Well, last question about this paragraph.

PROCEEDINGS

1 Did you understand or did you not, from your in-depth
2 review of this policy, that Google told you it could share your
3 de-identified information with app developers?

4 **A.** Again, it's still my information. I would -- I would
5 think that if Google tells me that I'm in control and that they
6 won't collect my information, that that would include all of my
7 information. It should be everything.

8 **Q.** Sir, my question was different.

9 My question is simply: Do you agree, from your in-depth
10 review of this disclosure, that Google told you it could share
11 non-personally identifiable information with third-party apps?
12 Yes or no, please.

13 **A.** From my understanding, if WAA is turned off, that
14 shouldn't be the case.

15 **Q.** Sir -- we can take that down, Brooklyn.

16 Your complaint in this case, just generally speaking, is
17 that you feel Google has invaded your privacy; is that correct?

18 **A.** Google told us we had the option and put us in control and
19 gained our trust, and I -- we asked Google to not collect our
20 data and they did.

21 **Q.** So the answer to my question is "yes"?

22 **A.** Yes.

23 **Q.** That conduct that you complain of is Google getting
24 depersonalized interaction data from other apps through
25 Firebase; correct? That's what we're here for.

PROCEEDINGS

1 A. Yes.

2 Q. You aren't saying that those apps provided your emails to
3 Google, are you?

4 A. No. I'm saying --

5 Q. You're not saying -- "no" is fine.

6 You are not saying that those third-party apps gave Google
7 recordings of your phone calls, are you?

8 A. No.

9 Q. You're not saying that those third-party apps told Google
10 who your contacts are; correct? Correct?

11 A. I don't believe so, no.

12 Q. You're not saying that those third-party apps told Google
13 your home address; correct?

14 A. No.

15 Q. You're not saying those third-party apps told Google your
16 email address; true?

17 A. Like I mentioned, it's a bunch of other information.

18 Q. So the answer is, yes, that's true?

19 A. I'm not saying they had my email, no.

20 Q. These apps aren't giving Google any photographs or videos
21 that you have; correct?

22 A. It's hard to know for sure.

23 Q. Do you believe -- as you sit here today, do you believe in
24 some idea that Google is giving -- excuse me -- that

25 third-party apps are giving Google videos and pictures of you?

PROCEEDINGS

1 **A.** No. The other information that we had previously
2 mentioned.

3 **Q.** You know that doesn't happen; right? Google is not giving
4 any personal information -- strike that.

5 You know that these third-party apps are not giving Google
6 any personally sensitive information about you; correct?

7 **A.** I believe that some of this information that Google calls
8 non-personal is still my information. It's still information
9 about me.

10 **Q.** You understand that the apps did not give Google the
11 names, for instance, of the websites you visit; true?

12 **A.** Okay.

13 **Q.** Yes?

14 **A.** The websites?

15 **Q.** Yes.

16 **A.** Okay.

17 **Q.** You agree the apps did not give Google your web browsing
18 activity; true?

19 **A.** Again, I'm not a software engineer. This is hard for a
20 normal person to answer.

21 **Q.** Well, you looked over here and you looked at this table
22 and you said Google's doing the wrong thing and Google should
23 stop. You made quite a -- quite a statement there. So I would
24 think you would know.

25 Do the apps that partner with Google give Google your

SANTACRUZ - REDIRECT / LEE

1 browsing history? Yes or no.

2 **A.** No.

3 **Q.** Those apps don't give Google access to your text messages,
4 do they?

5 **A.** No, but there's other information.

6 **Q.** We're not here in this case about a data leak or a data
7 breach; correct? You understand this case has nothing to do
8 with that; yes?

9 **A.** Google's had data leaks.

10 **Q.** But that's not what this case is about?

11 **A.** Correct.

12 **Q.** Mr. Santiago, that's all I have. Thank you.

13 **A.** Thank you.

14 **THE COURT:** Mr. Lee.

15 **MR. LEE:** Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. LEE:**

18 **Q.** How you doing, Mr. Santiago? Are you holding up?

19 **A.** Well, I'm not used to being in a place like this, and it's
20 quite nerve-racking.

21 **Q.** Well, I can tell you, you hurt my feelings, because you
22 said that I misrepresented something that Mr. Hur said in
23 opening.

24 **A.** So sorry.

25 **Q.** Let's just clear that up. Okay?

1 A. Yes.

2 Q. You -- counsel for Google read to you what was said in
3 opening; right?

4 A. Yes. I have it here.

5 Q. And I think you pointed out -- or did you point out that
6 Mr. Hur said really both things? He said there are class
7 representatives that turned it off before or after joining the
8 lawsuit; right?

9 A. Yes.

10 Q. So if Mr. Hur was saying that you turned it off before
11 joining the lawsuit, that would be true; fair?

12 A. That would be included, yes.

13 Q. Right. But if he was saying that you turned it off after,
14 would that be true or untrue?

15 A. That would be untrue.

16 Q. All right. You were asked about apps that you continued
17 to use after joining the lawsuit. Do you remember?

18 A. Yes.

19 Q. There was ESPN Fantasy, there was Twitter --

20 A. Yes.

21 Q. -- Target?

22 Were there any others? I don't remember.

23 A. There was a few. MapMyRide.

24 Q. A few more.

25 Can you --

1 **A.** Duolingo.

2 **Q.** Just to reorient us all, can you explain to the jury why
3 you had to continue to use those apps after you joined the
4 lawsuit as a class representative in this case?

5 **A.** Sure. Well, a few reasons, the first one being that
6 Google should have to honor its promises to its users and make
7 a privacy button that actually works. It shouldn't be on us to
8 just stop using apps and stop using our smartphones in this
9 digital world that we rely on it to get by every day. It's a
10 vital part of our modern society.

11 And, secondly, as I mentioned, as a class representative,
12 it was my responsibility to a hundred million people to
13 continue to use my apps so that our experts can figure out what
14 Google was collecting, where it was going, what they're doing
15 with that.

16 And, finally, for legal reasons, to try to get Google to
17 change its practices.

18 **Q.** All right. You mentioned, at the end of the
19 cross-examination, that you said apps don't give browsing
20 history to Google. Do you remember that?

21 **A.** Yes.

22 **Q.** I just want to know if you remember that.

23 **A.** I remember his question, yes.

24 **Q.** Right. And I just want to be very, very clear because he
25 asked it one way and then he asked it a different way.

1 Was he talking about web browsing or app browsing?

2 A. I was confused by it myself, so I wasn't sure.

3 Q. Okay. So let me just ask you straight up.

4 Do apps -- does Google collect app browsing data from apps
5 even when WAA is off?

6 A. Yes. That's why we're here; right?

7 Q. That's what the case is about; right?

8 A. Yes.

9 Q. It's not about web browsing, is it?

10 A. No. It's about the apps.

11 Q. All right. There was some discussion about the term
12 "Google Account." Do you remember that?

13 A. I do.

14 Q. And you noted that that term sounded, I think you said,
15 quite deceptive?

16 A. Yes.

17 Q. Can you explain to the jury why that is?

18 A. Well, if Google is taking our data and putting it
19 somewhere else that's not our Google Account, they need to tell
20 us that. They need to be clear about that.

21 Our Google Account should be everything about us, not some
22 stuff that Google is putting somewhere else. Where is that
23 going? We don't know.

24 And when Google tells us that they're putting us in
25 control but then putting our information somewhere else where

1 we can't even see it, it doesn't sound like we're in control of
2 whether our data is being collected or what it's being used
3 for. It's an illusion of us -- of us being in control.

4 It's -- you're giving the user a false sense of security.

5 **Q.** Why don't we take a look at the privacy policy again.

6 It's PX67.

7 **A.** Okay.

8 **Q.** And I promise you we're not going to redo everything. I
9 just want to check something. Okay?

10 **A.** Okay.

11 **Q.** All right. Let's look at the big bold letters again.

12 **A.** Okay.

13 **Q.** You remember reading that to the jury; right?

14 **A.** Yes.

15 **Q.** Where does it say there that you're only in control of
16 what goes into your Google Account?

17 **A.** It doesn't. It says that Google's putting you in control
18 of all of your information.

19 **Q.** All right. Let's go down two paragraphs.

20 And do you remember you read to the jury this other
21 promise from Google?

22 [As read]:

23 "And across our services, you can adjust your
24 privacy settings to control what we collect and how
25 your information is used."

1 Do you see that?

2 A. Yes.

3 Q. Okay. Where does it say that you're only in control of
4 what Google can collect and use in your Google Account?

5 A. It doesn't. It seems like it's all of our information,
6 everything.

7 Q. All right. Let's go to the next page.

8 We read that last sentence [as read]:

9 "The information Google collects and how that
10 information is used depends on how you use our
11 services and how you manage our privacy controls."

12 Do you see that?

13 A. Yes, I do.

14 Q. Where in that sentence does it say managing your privacy
15 controls only controls what's collected in your Google Account
16 but Google can save it somewhere else?

17 A. It doesn't say that.

18 Q. All right. Let's look at PX116.

19 Let's blow up the part that says "To let Google save."
20 I think that's on the next page. There we go.

21 Do you remember this?

22 A. Yes.

23 Q. Where here does it say that to let Google save, it must
24 be -- it's talking about your Google Account? Does it say that
25 anywhere there?

SANTACRUZ - REDIRECT / LEE

1 A. It does not say that.

2 Q. Okay. Was there anything -- you can put that down -- that
3 counsel for Google showed you that indicated that Google would
4 take, copy, or use any data from the use of third-party apps if
5 WAA or SWAA was off? Did he show you anything like that?

6 A. No.

7 Q. Was there anything that counsel for Google showed you
8 about Google accounts and what was or was not saved in those
9 accounts that indicated that data was saved someplace other
10 than this so-called Google Account?

11 A. No.

12 Q. He didn't show you any of that?

13 A. No.

14 Q. All right.

15 MR. LEE: Let's get 67 back up, and let's go to
16 page 16, Mr. Boles. And I'd like to blow up just the bottom
17 half, starting with the categories.

18 Yes. Thank you.

19 BY MR. LEE:

20 Q. It might be easier to see it on the screen. I don't know
21 if your screen's working.

22 A. Yes.

23 Q. Okay. Let's try to do this together.

24 A. Okay.

25 Q. So at the top, do you see where it says it's titled

1 "Categories of personal information we collect"?

2 A. Yes.

3 Q. The reason I want to focus on this is because counsel for
4 Google talked a little -- a lot about personal information and
5 non-personal information. Do you remember that?

6 A. I do.

7 Q. Okay. So let's look at the part of the privacy policy
8 that talks about what Google considers personal information.
9 Okay?

10 A. Okay.

11 Q. Let's start at the top. Do you see where it says
12 "Identifiers"?

13 A. Yes.

14 Q. Okay. So they include some things that they consider
15 identifiers that are personal information. Do you see that?

16 A. Yes.

17 Q. One of those things that they consider personal is -- do
18 you see where it says "unique identifiers"?

19 A. Yes.

20 Q. Does Google consider that, according to this page,
21 personal information?

22 A. According to this page, yes.

23 Q. And do you see just below, in the same section, they also
24 refer to "application or device you're using"?

25 A. Yes, I see that.

SANTACRUZ - REDIRECT / LEE

1 Q. So the app and device you're using -- apps and device
2 you're using, does Google consider that personal information?

3 A. Yes.

4 Q. All right. Let's go a little further down, where it says
5 "Internet, network, and other activity information."

6 Do you see in the second sentence it refers to information
7 about the interaction of your apps, browsers, and devices with
8 our services?

9 A. Yes, I see that.

10 Q. That's what this case is about; right?

11 A. It is.

12 Q. Does Google consider that your personal information?

13 A. According to this, yes.

14 Q. The next sentence, beginning with "and activity on
15 third-party sites and apps that use our services." Do you see
16 that?

17 A. Yes.

18 Q. And does Google also consider that your personal
19 information?

20 A. Yes.

21 Q. Based on your involvement in this case and the work you've
22 done on this case, does your SWAA-off data include identifiers,
23 your apps, your device, and your app activity on third-party
24 sites that use Google services?

25 A. Yes, it does.

SANTACRUZ - REDIRECT / LEE

1 **Q.** By the way, let's just be clear. Do you agree or disagree
2 that your sWAA-off data is not personal to you?

3 **A.** It is personal to me. It's my information still.

4 **Q.** Based on your involvement in this case, can you explain to
5 the jury what you know is included in the sWAA-off data, or
6 I guess what Google's counsel called de-identified data?

7 But let's just stick with sWAA off for purposes of my
8 question. I don't want to get confused.

9 Based on your involvement in this case, explain to the
10 jury what is included in the sWAA-off data that Google collects
11 without permission.

12 **A.** Well, they're collecting information about my gender, my
13 location, my apps that I've downloaded, everything I've done on
14 those apps, what I've bought, what I've looked at, things I've
15 clicked, time spent on them, unique ID identifiers -- or I'm
16 sorry -- unique device identifiers, IP address, which is my
17 device. It's -- I would rather give someone my name and my
18 email and my phone number than give them my phone with no
19 passcode because that's everything else. That's all of it.

20 **Q.** And do you consider that private to you?

21 **A.** Yes, to all of us.

22 **Q.** Is it personal to you and the class?

23 **A.** Yes.

24 **THE COURT:** We're now at the witching hour.

25 **MR. LEE:** I have the last question, Judge.

1 **THE COURT:** The last question, okay.

2 **MR. LEE:** Famous last words.

3 **THE COURT:** All right. Well, I'm holding you to it.

4 (Laughter.)

5 **BY MR. LEE:**

6 **Q.** All right. Counsel for Google asked you if there's a --
7 remember he talked about how you let Target have your
8 information when you were on that app?

9 **A.** Yes.

10 **Q.** And then suggested, "Well, you let Target do it. Why
11 shouldn't Google get to do it too?"

12 Can you explain to the jury in your mind, in your view,
13 what is the difference between a single app, like Target,
14 having your app activity information when you're just on that
15 app versus what Google is doing in terms of what it collects?

16 **A.** Well, I would have given Target permission to have the
17 information from within that app. Google did not have
18 permission to -- or have consent to get data from what I'm
19 doing on Target.

20 Google's the largest collector of data in the world. We
21 all know this. They have more information on us than any
22 single app can ever have. They have everything, all these
23 things we've talked about. So I'm okay with one app, Target,
24 having my information about what I'm shopping for; but Google
25 has everything across all of our apps, across all of our

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1 devices, and that's -- that's a lot more than I'm comfortable
2 with.

3 **Q.** Thank you, Mr. Santiago. I'm going to -- I'm going to
4 step away now so I don't get in trouble from the judge.
5 Thank you.

6 **A.** Thank you.

7 **MR. ATTANASIO:** No redirect, Your Honor.

8 **THE COURT:** Very well.

9 You may step down.

10 **THE WITNESS:** Thank you.

11 (Witness excused.)

12 **THE COURT:** Members of the jury, we've completed the
13 day. Remember my admonitions. Do not discuss this amongst
14 yourselves, with anyone else, no research, nothing about the
15 case. It's a beautiful day. Don't think about this case.
16 Just enjoy the day.

17 And then be here at 8:30 so we can get started. Enjoy the
18 afternoon.

19 (Proceedings were heard out of the presence of the jury.)

20 **THE COURTROOM DEPUTY:** Court stands in recess.

21 **THE COURT:** Okay. We're out of the presence of the
22 jury.

23 R.J., the time pronouncements.

24 **THE LAW CLERK:** Plaintiffs have 16 hours, 41 minutes,
25 and 18 seconds. Defendant has 16 hours, 9 minutes, and 32

PROCEEDINGS

1 seconds.

2 **THE COURT:** Okay.

3 **MR. HUR:** Your Honor?

4 **THE COURT:** Yes.

5 **MR. HUR:** One question about the time. When the
6 parties are at sidebar, how is that time allocated?

7 **THE COURT:** It's not running.

8 **MR. HUR:** It's not counted?

9 **THE COURT:** No.

10 **MR. HUR:** Okay.

11 Your Honor, one other housekeeping item, which is that
12 yesterday we saw some of the congressional testimony from
13 Google's CEO. We understood that we were providing the court
14 reporter with a transcript so that it could be in the record.
15 We did not understand the exhibit was being -- the transcript
16 was being admitted as an exhibit. It was unclear to me exactly
17 what happened when it was handed up, so I just want to be
18 clear.

19 **MR. CARMODY:** I can tell you, because I offered it in
20 all courts, including this one, whenever there's a video
21 played, whether it's a deposition or Mr. Sundar Pichai, there's
22 no record. We have to have a record for the Appellate Court to
23 see, you know, what was said. So it's just a record. It's not
24 going back to the jury, but it's going to be here for the
25 Ninth Circuit.

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1 **THE COURT:** That's correct. The court reporter does
2 not transcribe when it's being played. So, however, you could
3 put the link. It could be -- the official record could be the
4 video link, I think.

5 But the bottom line is, it was offered, it was admitted,
6 so we're done. I mean, it's there.

7 **MR. DAVID BOIES:** The exhibit is admitted in evidence.

8 **THE COURT:** Yes, it's been admitted.

9 **MR. HUR:** Oh. I understood that Mr. Carmody was just
10 saying it's not going back to the jury, but it's here for the
11 record for the Appellate Court, which is the way I understood
12 it, Your Honor.

13 **THE COURT:** Well --

14 **MR. DAVID BOIES:** It may or may not go back to the
15 jury if they -- I assume it does go back to the jury if it's in
16 evidence. I mean, if it's in evidence. It was admitted in
17 evidence.

18 **THE COURT:** The bottom line is, we -- it is now in
19 evidence. I admitted it, the transcript. I don't think at the
20 time I had an objection. It was admitted. It's now in
21 evidence. I'm not going to change -- that's -- it will go back
22 because it's in evidence.

23 **MR. HUR:** Your Honor, when was it -- when was the
24 transcript admitted?

25 **THE COURT:** I believe somebody offered it, and I --

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1 **MR. CARMODY:** I did earlier.

2 **THE COURT:** Do you remember the number? I don't
3 remember the number, but --

4 **MR. CARMODY:** I thought it was 45.

5 **THE COURT:** -- my recollection was there was no
6 discussion about it, and I don't even think there was an
7 objection.

8 **MR. DAVID BOIES:** And, in any event, Your Honor, of
9 everything that's an admission, this is the CEO. So whether
10 there was an objection or not, the evidence was going to come
11 in.

12 **MR. HUR:** Your Honor --

13 **THE COURT:** The difference would be if they wanted to
14 see it, they would then play it if they -- so I don't quite see
15 why you're hung up on this. I mean, it is -- so --

16 **MR. HUR:** Yes, Your Honor, if it was a deposition, for
17 example, the transcript wouldn't go back. They -- sure, they
18 could ask for it to be replayed and that would be one thing,
19 but I understood that the transcript there was just for the
20 record, not actually being admitted as an exhibit.

21 **THE COURT:** Well, we could have had -- and perhaps you
22 can go back and look. We could have had a discussion about
23 that, but my recollection is we didn't. It was offered as an
24 exhibit. I don't recall any objection, and so it was admitted,
25 and I'm not going to now unscramble it. It was admitted in

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1 front of the jury, that transcript, as evidence so --

2 **MR. SANTACANA:** There's a reason for that, Your Honor,
3 which is --

4 **THE COURT:** Pardon?

5 **MR. SANTACANA:** There's a reason why there was no
6 objection, which is that we made an email agreement last night
7 that it would be provided to the court reporter, not admitted
8 into evidence, and so we did not -- based on that email, we
9 didn't object because we were confused what they were trying to
10 do.

11 **THE COURT:** Well, I'm oblivious to all of that
12 discussion, so I don't know what I'm supposed to do with it.
13 What I hear -- my recollection was there was an offer of the
14 transcript with an exhibit number, and all I know is I didn't
15 get an objection and I think I admitted it.

16 So I can't read your minds. I don't know about some deal;
17 but, you know, if I'm wrong about my recollection that we
18 actually did admit it without objection, we can discuss it
19 again. If my recollection is correct, it was offered, I didn't
20 hear anything, I admitted it, I ain't gonna unscramble.

21 **MR. HUR:** Your Honor, what -- I'm sorry.

22 **MR. DAVID BOIES:** We'll go back and look at the
23 transcript.

24 **THE COURT:** One at a time. Yes?

25 **MR. HUR:** Your Honor, what happened this morning is

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1 that Mr. Monsees was on the stand. Mr. Carmody was about to
2 reexamine him. We had agreed on the language that was
3 consistent with the transcript, and we had agreed it would be
4 given to the court reporter so that it could be part of the
5 record, but not an exhibit. I, candidly, did not hear him even
6 say that it was he was offering to admit it into evidence. It
7 was not when the testimony of Mr. Pichai was being played or
8 thereafter. It was this morning.

9 **THE COURT:** Okay. Well, why don't you go back and
10 look at the transcript and tell me what -- remind me what
11 happened this morning. Okay?

12 **MR. HUR:** Thank you, Your Honor.

13 **THE COURT:** And if I didn't admit it into evidence,
14 then we'll discuss how best it should be memorialized. If I
15 did admit it into evidence and there was no objection, then the
16 train has left the station. But let's deal with it tomorrow.
17 Okay?

18 **MR. HUR:** Thank you, Your Honor.

19 **THE COURT:** Thank you.

20 (Proceedings adjourned at 1:38 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Thursday, August 21, 2025

Ana Dub

Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG

CSR No. 7445, Official United States Reporter